

13-19A Marsh Street, Arncliffe NSW 2205

**(Lot 100 in DP 1231954, Lot 31 in DP 1231486, Lot 14 in DP
213314 and Lot 1 in DP 108492)**

Cooks Cove Planning Proposal PP-2022-1748

Planning Agreement

Under s 7.4 of the *Environmental Planning and Assessment Act 1979*

Bayside Council

and

**Cook Cove Nominees No 1 Pty Ltd in its capacity as the
trustee of the Cook Cove Property Trust 1**

and

**Cook Cove Nominees No 2 Pty Ltd in its capacity as the
trustee of the Cook Cove Property Trust 2**

Date:

17 MARCH 2025.

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Contacts Sheet

Council:

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Address 444 - 446 Princes Highway, ROCKDALE NSW 2216
Telephone (02) 9562 1666
Facsimile (02) 9562 1777
Email council@bayside.nsw.gov.au
Representative Peter Barber (Director - City Futures)

The Developer:

Name Cook Cove Nominees No 1 Pty Ltd (ACN 672 807 037) in its capacity as the trustee of the Cook Cove Property Trust 1
Address Legion House Level 3 161 Castlereagh Street Sydney NSW 2000
Telephone 02 91455244
Email peter@boydproperties.com.au
Representative: Peter Bettridge

The Developer:

Name Cook Cove Nominees No 2 Pty Ltd (ACN 672 807 046) in its capacity as the trustee of the Cook Cove Property Trust 2
Address Legion House Level 3 161 Castlereagh Street Sydney NSW 2000
Telephone 02 91455244
Email peter@boydproperties.com.au
Representative: Peter Bettridge

This Deed constitutes a planning agreement within the meaning of s 7 4 of the *Environmental Planning and Assessment Act 1979* (NSW) and facilitates the provision of Development Contributions for the public benefit

Parties

Bayside Council ABN 80 690 785 443 of 444 – 446 Princes Highway, Rockdale NSW 2216
(**Council**)

and

Cook Cove Nominees No 1 Pty Ltd in its capacity as the trustee of the Cook Cove Property Trust 1
(ACN 672 807 037) of Legion House Level 3, 161 Castlereagh Street, Sydney NSW 2000 (**Cook Cove 1**)

and

Cook Cove Nominees No 2 Pty Ltd in its capacity as the trustee of the Cook Cove Property Trust 2
(ACN 672 807 046) of Legion House Level 3, 161 Castlereagh Street, Sydney NSW 2000 (**Cook Cove 2**)

(Cook Cove 1 and Cook Cove 2 together, the **Developer**)

Background

- A Cook Cove Inlet Pty Ltd, being a person who is associated with the Developer, has sought a change to an environmental planning instrument which will result in the Land being rezoned (**Instrument Change**)
- B Cook Cove 1 owns Lot 31 in DP1231486, Cook Cove 2 owns Lot 100 in DP 1231954 and Council owns the Council Land (being Lot 14 in DP213314 and Lot 1 in DP 108492)
- C The Developer intends to carry out the Development on the Land, in respect of which the Developer proposes to make future Development Applications
- D The Developer offers to make Development Contributions on the terms set out in this Deed in accordance with section 7 4 of the Act, in connection with the Instrument Change and the carrying out of the Development facilitated by the Instrument Change

Operative Provisions

Part 1 - Preliminary

1 Definitions and interpretation

1.1 In this Deed the following definitions apply

Act means the *Environmental Planning and Assessment Act 1979* (NSW)

Assign as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest

Approval means any approval, consent, certificate, permit, endorsement, licence, condition or requirements (and any modifications or variations to them) which may be required by Law or an Authority

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date in favour of Council by one of the following trading banks

- (1) Australia and New Zealand Banking Group Limited
- (2) Commonwealth Bank of Australia
- (3) Macquarie Bank
- (4) National Australia Bank Limited
- (5) St George Bank Limited
- (6) Westpac Banking Corporation
- (7) Any other financial institution approved by Council, in its absolute discretion, in response to a request from the Developer

Block 1 means the area generally contained within the area marked "Block 1" on the Development Contribution Plan

Block 2 means the area generally contained within the area marked "Block 2" on the Development Contribution Plan

Block 3B means the area generally contained within the area marked "Block 3B" on the Development Contribution Plan

Block 3C means the area generally contained within the area marked "Block 3C" on the Development Contribution Plan

Business Day means any day in New South Wales which is not a Saturday, Sunday or any proclaimed public holiday

Certified Cost to Complete any Works means the cost to complete those works as certified by a quantity surveyor appointed by the Developer being a Fellow member of the Australian Institute of Quantity Surveyors, such certification being as at a date not being more than 3 months prior to the date upon which either (as appropriate)

- (1) the Works were required to be completed under either clause 6 4 or **Schedule 3** (disregarding the operation of clause 28 10), or
- (2) the Developer wishes to substitute Security under clause 28 10

Claim means, against any person, any claim, allegation, cause of action, demand, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability of any kind (including in respect of interest and including one which is present or future, prospective or contingent and one the amount of which is fixed or not ascertained) and costs (whether or not the subject of a court order) whether at law, in equity, under statute or otherwise

Construction Certificate has the meaning given to that term in the Act

Contamination means any material, gas, substance, liquid, chemical or biological mineral or other physical matter which would, if present on the Land

- (1) result in an Authority issuing a notice, direction or order under an Environmental Law, or
- (2) which would constitute a violation or contravention of any Environmental Law

Contributions Plan means the *Wolli Creek and Bonar Street Precincts Urban Renewal Area Contributions Plan 2019*

Contribution Value means the amount specified in **Schedule 3** in the column headed "Value of Contribution" for each item of the Development Contributions as Indexed in accordance with this document

Council means Bayside Council, its successors and assigns

Council Land means the Land comprised in Lot 14 in DP213314 and Lot 1 in DP108492

Dedication Land means the land being dedicated to Council as set out in items 8, 9 and 10 in **Schedule 3** and as identified in the Draft Subdivision Plan

Deed means this Deed and includes any schedules, annexures and appendices to this Deed

Defect means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work or will require maintenance or rectification works to be performed on them at some time in the future as a result of the existence any such defect, but excludes any damage, to the extent it is caused by the Council or any other person other than the Developer

Defects Liability Period in respect of a Work means the period of 1 year commencing on the day immediately after the Council assumes responsibility for the relevant Work under clause 19 8

Detailed Design means the detailed description and specifications, including design drawings, with respect to each item of Works in accordance with the Standards

Developer means Cook Cove 1 and Cook Cove 2, whose obligations are joint and several

Development means the development of the Land for predominantly mixed-use and logistics purposes, to be completed in stages and generally in accordance with the Planning Proposal.

Development Application has the meaning given to it in the Act

Development Consent means the determination by approval of the Development Application for the Development or a stage of the Development

Development Contribution means the works, land dedication and monetary contribution, to be used for, or applied towards, the provision of a Public Purpose as set out in **Schedule 3**, and the

grant of the Foreshore Easement.

Development Contribution Plan means the plan shown in **Schedule 5**

Developer Land means the land comprised in Lot 31 in DP1231486 and Lot 100 in DP1231954

Draft Subdivision Plan means the draft subdivision plan shown in **Schedule 6**

Encumbrance means an interest or power

- (1) reserved in or over an interest in any asset,
- (2) arising under, or with respect to, a Bio-Banking Agreement,
- (3) arising under the *Community Land Management Act 2021* (NSW) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, covenant, lease, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale, or
- (4) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation

Encumber means to grant an Encumbrance

Environmental Law means all planning, environmental or pollution laws and any regulations, orders, directions, ordinances or requirements, permissions, permits, licences issued under those laws or instruments

Equipment means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Deed

Excluded Encumbrances means the interests indicated on the Draft Subdivision Plan (marked "E" and "F" for easements on proposed lot 14), or as otherwise agreed in writing by Council

Flood Mitigation Works means those Works contained in Item 6 in **Schedule 3**

Foreshore Easement means the easement granted by the Developer in favour of Council for the benefit of public access to the foreshore pathway as set out in **Schedule 3**, identified in **Schedule 8** and on the terms set out in **Schedule 7**

Foreshore Works means the Works required to construct the foreshore pathway as set out in item 4 of **Schedule 3**

GFA has the meaning given to the term "gross floor area" in the LEP

GST has the same meaning as in the GST Law

GST Law has the same meaning as in *A New Tax system (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST

Hold Point means the stage of development of the Development where at least 80% of the GFA of the Development has been delivered and in respect of which GFA an Occupation Certificate or Occupation Certificates have been issued

Hold Point Development Contributions means the following Development Contributions:

Development Contribution Number in Schedule 3	Development Contribution description
1.	Gertrude Street extension and upgrade.
2.	Extension of Gertrude Street East.
3.	Extension of Flora Street.
8.	Open Space and Recreation - Dedication of land adjacent Flora Street.
9.	Public Road - Dedication of Land for Public Road (Flora Street East) .
11. (in part)	80% of the Pemulwuy Park, Riverine Park & active transport links Monetary Contributions have been paid – (approximately \$11.2 million (\$1m on first VPA anniversary + 80% of balance, subject to increases arising from indexing provisions)
12.	Foreshore Easement.
4. (in part)	50% by Value of Contribution of works Public open space – Cooks River foreshore.
6. (in part)	50% by Value of Contribution of Flood Mitigation Works.

Index/Indexed means:

- (1) for items 1, 2 and 3 of the Works in **Schedule 3**, Producer Price Index (3101 Road and bridge construction NSW) or any other index which supersedes that index;
- (2) for items 4, 5, 6 and 7 of the Works in **Schedule 3**, Producer Price Index (302 Non-residential building construction NSW) or any other index which supersedes that index; and
- (3) for each item comprising a Monetary Contribution or Dedication Land, the Consumer Price Index (All Groups Index) for Sydney or any other index which supersedes that index.

Instrument Change means the change to the LEP as a result of the Planning Proposal.

Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

Land means the Council Land and Developer Land, as further specified and described in **Schedule 2** of this Deed.

Law means all legislation, regulations, by-laws, common law and other binding order made by any Authority.

LEP means *Bayside Local Environmental Plan 2021*.

LRS means New South Wales Land Registry Services.

Maintain means in relation to a Work, to keep in a good state of repair and working order, and includes repair of any damage to the Work.

Minister means the Minister administering the Act

Monetary Contribution means the monetary contribution set out in item 11 of **Schedule 3**

Occupation Certificate has the same meaning as in the Act

Pemulwuy Park means the proposed public open space generally contained within proposed lots 4, 6, 8, 13 and 14 in the Draft Subdivision Plan

Planning Legislation means the Act, the *Local Government Act 1993* (NSW) and the *Roads Act 1993* (NSW)

Planning Proposal means the planning proposal known as the “Cooks Cove Planning Proposal” as contemplated by planning proposal PP-2022-1748 which seeks to remove the Land from the SEPP and amend the LEP to

- (1) rezone the Land to SP4 Enterprise, RE1 Public Recreation, C2 Environmental Conservation and SP2 Infrastructure,
- (2) reclassify Lot 14 DP213314 and Lot 1 DP108492 from community land to operational land,
- (3) introduce an overall maximum building height of RL 51m with transitions across the site,
- (4) limit gross floor area within different areas of the site to an aggregate of 343,250m² and insert floor area requirements to achieve intended logistics and warehousing outcomes, and
- (5) permit additional permitted uses within the SP4 Enterprise zone and site-specific planning provisions

Public Purpose has the same meaning as in s 74(2) of the Act

Quantity Surveyor means a person approved by Council who

- (1) is a member of their respective professional organisation and has been for at least five (5) years,
- (2) practices as a quantity surveyor for works of the same nature as the relevant Works,
- (3) is active as a quantity surveyor at the time of their appointment,
- (4) has at least three (3) years' experience in valuing works of the same nature as the relevant Works, and
- (5) undertakes to act fairly and promptly in accordance with the requirements of this Deed

Rectification Notice means a notice in writing

- (a) identifying the nature and extent of a Defect,
- (b) specifying the works or actions that are required to Rectify the Defect,
- (c) specifying the date by which or the period within which the Defect is to be rectified

Rectify means rectify, remedy or correct

Regulation means the *Environmental Planning and Assessment Regulation 2021* (NSW)

Security means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Council

SEPP means *State Environmental Planning Policy (Precincts – Eastern Harbour City) 2021*

Standards means the standards referred to in **Schedule 4** or as otherwise notified by Council acting reasonably

Sunset Date means 7 years from the date of the issue of the first Construction Certificate for development creating new Gross Floor Area within the Developer Land arising from the Instrument Change

Transport for NSW means Transport for NSW or its officers, contractors, agents, invitees and licensees

Work(s) means the works required to be made by the Developer as set out in item 1, 2, 3, 4, 5, 6 and 7 of **Schedule 3**

- 1 2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires
- 1 2 1 Headings are inserted for convenience only and do not affect the interpretation of this Deed
- 1 2 2 A reference to a Business Day means a day other than a Saturday, Sunday or public holiday in Sydney
- 1 2 3 If the day on which any act, matter or thing is to be done under this Deed is not a Business Day, the act, matter or thing must be done on the next Business Day
- 1 2 4 A reference to time is local time in Sydney
- 1 2 5 A reference to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars
- 1 2 6 A reference to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST
- 1 2 7 A reference to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision
- 1 2 8 A reference to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced
- 1 2 9 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed
- 1 2 10 An expression importing a natural person includes any company, corporation, trust, partnership, joint venture, association, unincorporated association, body corporate, statutory body, statutory authority or governmental agency
- 1 2 11 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning
- 1 2 12 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders
- 1 2 13 Reference to the word "include" or "including" are to be construed without limitation

1 2 14 A reference to a Party to this Deed includes a reference to the personal representatives, legal representatives, agents and contractors of the Party, and the Party's successors and assigns substituted by novation

1 2 15 Any schedules, appendices and attachments form part of this Deed

2 Application of this Deed

2 1 This Deed is made in respect of the Instrument Change and applies to the

2 1 1 Land,

2 1 2 Instrument Change, and

2 1 3 Development

3 Status and operation of this Deed

3 1 This Deed takes effect and operates

3 1 1 as a deed from the date the Parties have all executed the same copy of this Deed, and

3 1 2 as a planning agreement for the purpose of the Act from the date that the Instrument Change commences in accordance with section 3 24(5) of the Act

3 2 Subject to clause 3 1, the Parties agree that this Deed is a Planning Agreement within the meaning of section 7 4 of the Act and is governed by Part 7, Division 7 1, Subdivision 2 of the Act

4 Further agreements relating to this Deed

4 1 The Parties, at any time and from time to time, may enter into agreements in writing relating to the subject matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed

5 Application of s 7.11, s 7.12 and Division 7.1, Subdivision 4 of the Act to the Development

5 1 The Parties agree that this Deed excludes the application of sections 7 11 and 7 12 of the Act to the Development

5 2 This Deed does not exclude the application of Division 7 1, Subdivision 4 of the Act to the Development

Part 2 – Development Contributions

6 Provision of Development Contributions

6 1 The Developer must make Development Contributions to the Council in accordance with **Schedule 3**, in accordance with the Standards, and any other provision of this Deed relating to the making of Development Contributions

6 2 A Contribution Value specified in relation to a Development Contribution other than a Monetary Contribution does not define or limit the extent of the Developer's obligation in that regard, and, unless agreed by the parties under clause 7 5, the Developer is not entitled to any payment, credit or off-set to the extent that any costs incurred by it in making a Development Contribution exceed the relevant Contribution Value

6 3 Unless otherwise specified in this Deed (including **Schedule 3**), each Contribution Value will increase quarterly (with the calculation to be made as from the date the relevant Development

Contribution is required to be provided to Council under this Deed) in accordance with the following formula

$$A = B \times \frac{C}{D}$$

where

A = the indexed amount,

B = the relevant amount as set out in this Deed,

C = the Index most recently published before the date that the relevant payment or the calculation with respect to the relevant amount is to be made, and

D = the Index most recently published before the commencement date of this Deed

If **A** is less than **B**, then the amount of the relevant Contribution Value will not change

6 4 Notwithstanding anything else in this Deed, but subject to clause 28 10, the Developer must provide the following Developer Contributions by not later than the following dates

6 4 1 the Hold Point Development Contributions must be provided prior to the earlier of the Sunset Date and the Hold Point, and

6 4 2 the following Developer Contributions must be provided prior to the earlier of the Sunset Date and the issue of any Occupation Certificate of the last building in the last stage of the Development

(a) Balance of item 4 in the table in **Schedule 3** (Public Open Space – Cooks River),

(b) item 5 in the table in **Schedule 3** (Publicly Accessible Open Space - Figtree Plaza),

(c) Balance of item 6 in the table in **Schedule 3** (Flood Mitigation Works),

(d) Item 7 in the table in **Schedule 3** (Pemulwuy Park Embellishment),

(e) Item 10 in the table in **Schedule 3** (Open Space and recreation - Land dedication south of Block 3C within Lot 100/DP1231954), and

(f) any other Developer Contribution.

6 4 3 For the removal of doubt, all Developer Contributions must be delivered in full by no later than the Sunset Date See clause 28 10 8 for further details and a statement of some of Council's remedies if any Developer Contribution is not delivered in full by the Sunset Date

6 5 Council notes that Council wishes to be satisfied that the works to be carried out under Development Contribution Item 6 in **Schedule 3** ("Flood mitigation works – Pemulwuy Park") are undertaken to a sufficient degree before the other works comprising the Development commence so as to ensure that the Development does not cause any flooding issues over Council's Land The Developer acknowledges that

6 5 1 these works will be subject to appropriate arrangements with Council at the time, and

6 5 2 nothing in this Deed can be taken as a consent of Council for the conduct of those works unless appropriate arrangements in that regard are agreed with Council (acting reasonably) as landowner of the relevant land

Part 2.1 – Monetary Development Contributions and Dedication of Land

7 Monetary Contributions

- 7 1 The Developer is required to pay the Monetary Contribution to Council in accordance with Item 11 of **Schedule 3**
- 7 2 The Council will apply the Monetary Contribution made by the Developer towards the Public Purpose for which it is made as set out in **Schedule 3** and otherwise in accordance with this Deed
- 7 3 Any monetary Development Contribution the Developer is required to pay under this Deed is to be indexed in accordance with clause 6 3
- 7 4 The Parties agree that the Monetary Contribution must be used for the public purpose of the design and embellishment of
- 7 4 1 the future Pemulwuy Park (excluding any works to the temporary M6 and M8 construction compound),
- 7 4 2 upgrades to Riverine Park, and
- 7 4 3 any active transport links within these parks and Lance Studdert Reserve and Kyeemagh Boat Ramp Reserve
- 7 5 Despite anything in this clause 7
- 7 5 1 Council may apply part or all of the Monetary Contribution towards another Public Purpose(s) at its sole discretion, if the Council reasonably considers that the public interest would be better served by applying the Monetary Contribution towards that other Public Purpose(s), and
- 7 5 2 with the written agreement of Council and the Developer, the Monetary Contribution may be offset by future agreed works to proposed lot 13 in the Draft Subdivision Plan by the Developer to the embellishment of Pemulwuy Park. The scope and value of such works are to be agreed between the Parties (acting reasonably) and may include any modification to works delivered by an Authority (other than Council) within the Council Land

8 Payment of Monetary Contributions

- 8 1 The Parties agree that the Monetary Contribution is to be paid in instalments, with the initial payment of \$1,000,000 to be paid by the date that is 12 months from the date that the Instrument Change becomes effective under section 3 24(5) of the Act
- 8 2 Prior to applying for an Occupation Certificate for each building within the Developer Land arising from the Instrument Change, the Developer agrees to provide the Council with a certificate from a registered surveyor which confirms the total GFA of the relevant new building
- 8 3 Prior to an Occupation Certificate being issued for a relevant building, the Developer must pay a Monetary Contribution calculated in accordance with the following formula

$$\text{Monetary Development Contribution} = \frac{A}{343,250} \times \text{OMDC}$$

where

A is the GFA area of the relevant building, in square metres, as determined in the surveyor's certificate in clause 8 2, and

OMDC is the amount of Monetary Contribution remaining outstanding, Indexed in accordance with clause 6 3, as at the date of the surveyor's certificate in clause 8 2

- 8 4 A Monetary Contribution is made for the purposes of this Deed when the Council receives the full amount of the Monetary Contribution payable under this Deed in cash or by unendorsed bank

cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council

8 5 Council must provide the Developer with written confirmation of receipt of payment of any Monetary Contribution paid under this Deed

8 6 The Parties agree that the requirement to provide the Monetary Contribution in accordance with clause 7 1 and **Schedule 3** is a restriction on the issue of an Occupation Certificate

9 Dedication of land

9 1 The Developer must dedicate the Dedication Land to Council free of any trusts, estates, interests, covenants and Encumbrances (excluding the Excluded Encumbrances) in accordance with **Schedule 3** and this clause 9 and meet all costs (including legal and registration costs) associated with the dedication of the Dedication Land in that regard

9 2 The Dedication Land is dedicated to Council for the purposes of this Deed when

9 2 1 a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or

9 2 2 the Council is given

- (a) an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer as transferor that is effective to transfer the title to the relevant land to the Council when executed by the Council as transferee and registered,
- (b) the written consent to the registration of the transfer of any person whose consent is required to that registration,
- (c) a written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of registration of the transfer,
- (d) any document in registrable form which, when registered, will remove any Encumbrances registered on the title of that land, excluding the Excluded Encumbrances, and
- (e) the Council is given evidence that a transfer has been effected by means of electronic lodgment through Property Exchange Australia Ltd or another ELNO

9 3 The Developer must do all things reasonably necessary to enable registration of the transfer of the land to Council to occur

9 4 If, having used all reasonable endeavours, the Developer cannot ensure that land to be dedicated to the Council is free from all Encumbrances and affectations except for the Excluded Encumbrances, the Developer may request that Council agree to accept the land subject to those Encumbrances and affectations, but the Council may in its discretion and acting reasonably withhold its agreement

9 5 Despite any other provision of this Deed, if the Developer is required to dedicate land to the Council on which the Developer is also required to carry out a Work under this Deed, the Developer must comply with clause 9 2 2 not later than 7 days after the Work is completed for the purposes of this Deed

9 6 The Developer must

9 6 1 dedicate any land to be dedicated to Council under this Deed (including the Dedication Land) to the required Standard, and

9 6 2 indemnify, and keep indemnified, Council against all liability for and associated with any Claim arising from or in connection with a failure to comply with this clause 9 6

- 9 7 The Parties agree that the requirement to dedicate the land in accordance with this clause 9 and **Schedule 3** is a restriction on the issue of an Occupation Certificate for the Development arising from the Instrument Change, subject to clause 9 8
- 9.8 If the Developer does not dedicate land in accordance with this clause 9 and **Schedule 3**, then the Developer may:
- 9.8.1 request in writing that the Council exercises its rights under clause 24, and
 - 9 8 2 undertake to reimburse Council for the costs incurred by Council in the exercise of its rights under clause 24, and
 - 9 8 3 provide to Council additional Security of \$100,000 for the costs of the Council incurred under clause 9 8 2,
- and
- 9 8 4 upon receipt by the Council of the request, the undertaking and the Security, any Occupation Certificate which would otherwise be required by this Deed to be withheld because of the failure to dedicate that land (including under clause 9 7) is not required to be withheld and may be issued;
 - 9 8 5 upon reimbursement of the costs incurred by Council in the exercise of its rights under clause 24 the Council must release and return the Security or any unused part of it to the Developer within ten (10) business days of a request by the Developer being made for the release and return of that Security; and
 - 9 8 6 Security provided under clause 9 8.3 may be accessed by the Council in accordance with the provisions of clause 28.

10 Variation to timing of payment of monetary Development Contributions and Dedication of Land

- 10 1 The timing for provision of the Monetary Contribution or dedication or transfer of land that is required to be paid, dedicated or transferred under this Deed may be varied by written agreement between the Council and Developer, without the necessity for an amendment to this Deed.
- 10 2 The Party seeking the variation is to make a written request to the other Party accompanied by such information and supporting documents as is reasonably necessary to enable the other Party to properly consider the request.
- 10.3 The timing for provision of the relevant Development Contribution is taken to be varied when the Party to whom the request is made gives its written approval to the request.
- 10 4 The Party to whom a request under clause 10 2 is made may give or withhold its approval to the request in that Party's sole discretion.

11 Registration of Foreshore Easement

- 11 1 The Developer, at its own cost, must create and register the Foreshore Easement in favour of the Council over the part of the Developer Land on which all stages of the Foreshore Works are located on terms generally in accordance with the Foreshore Easement, by the date or time specified in item 12 in the table in **Schedule 3**
- 11.2 The Developer must comply with any reasonable directions by Council in respect of the creation and registration of the easement in accordance with clause 11 1.
- 11.3 If the Developer does not create and register an easement in favour of the Council in accordance with clause 11 1 (or is otherwise in breach of this Deed in respect of any of its obligations in connection with the Foreshore Easement), the Developer consents to Council compulsorily acquiring an easement over the foreshore land on terms generally in accordance with the Foreshore Easement as set out in **Schedule 7** in accordance with the Just Terms Act for the amount of \$1 (being the amount of compensation that the Developer agrees is payable to it on account of that acquisition under the Just Terms Act)

- 11 4 The Developer and the Council agree that
 - 11 4 1 clause 11 3 is an agreement between the Developer and the Council with respect to the compulsory acquisition of the Foreshore Easement for the purpose of s30 of the Just Terms Act,
 - 11 4 2 the Developer and the Council have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition, and
 - 11 4 3 the Developer indemnifies and agrees to keep indemnified the Council against all Claims made against the Council if the Council must pay compensation under Part 3 of the Just Terms Act to any other person who is not the Developer, in respect of the compulsory acquisition of that easement, undertaken in accordance with clause 11 3 (and must pay to Council the amount of that compensation as a Monetary Contribution by the earlier of ten (10) business days after demand for payment being made by Council (accompanied by an invoice for the amount payable) and prior to the issue of the then next Occupation Certificate with respect to the Development)

Part 2.2 –Provisions relating to carrying out of Work

12 Carrying out of Work

- 12 1 Prior to commencing any Works, the Developer, at its cost, must obtain all necessary Approvals required by a relevant Authority for the construction and use of the Works
- 12 2 The Developer must deliver the Works
 - 12 2 1 in accordance with the Standards,
 - 12 2 2 in the manner and timeframe set out in the table in **Schedule 3**, and
 - 12 2 3 in accordance with this clause 12 and **Schedule 3**
- 12 3 Without limiting any other provision of this Deed, any Work that is required to be carried out by the Developer under this Deed is to be carried out in accordance with
 - 12 3 1 any design approved by Council in accordance with clause 13,
 - 12 3 2 any relevant Approval,
 - 12 3 3 the Standards, and
 - 12 3 4 any other applicable law
- 12 4 The Developer, at its cost, must
 - 12 4 1 carry out and complete the relevant Works in accordance with all Approvals relating to the relevant Works (including the approval by Council of plans and any other information submitted under this deed),
 - 12 4 2 ensure that all relevant Works are constructed in a good and workmanlike manner, in accordance with the plans approved under this Deed, so that they are structurally sound, fit for purpose, and suitable for their intended use and that they comply with their current industry practice and standards (including any Australian Standards applicable to works of the same nature as each aspect of the Works) relating to each aspect of the Works, and in any event in accordance with the Standards,
 - 12 4 3 promptly advise Council of any significant delays which the Developer experiences in completing the relevant Works, and
 - 12 4 4 comply with any reasonable directions from the Council in respect of the construction of the relevant Works

- 12 5 The Parties agree that the requirement to provide the Works in accordance with clause 12 1 and **Schedule 3** is a restriction on the issue of an Occupation Certificate, subject to clause 28 10

13 Developer to prepare and submit designs

- 13 1 The Developer must

13 1 1 consult with Council with respect to the development of the Detailed Design, and

13 1 2 ensure that the Detailed Design is consistent with, and has regard to

- (a) any relevant policies of Council as identified in the Development Consent or any other Approval,
- (b) the requirements for the relevant item of Works in **Schedule 3**, and
- (c) the Standards

- 13 2 The Developer must prepare and submit the Detailed Design to Council for approval and a report from a suitable qualified and experienced Quantity Surveyor which estimates the cost to complete the relevant item of Work in accordance with the Detailed Design no later than three months (or such other time as the Parties may agree) prior to the date that the Developer

13 2 1 in the event that a Construction Certificate is required for the carrying out of the relevant Work, makes an application for a Construction Certificate for relevant Work, or

13 2 2 in the event that a Construction Certificate is not required for the carrying out of the relevant work, the date that the Developer proposes to carry out the relevant Work

- 13 3 The Parties acknowledge that development consent under the Act may be required in respect to the Works and that the operation of this clause 13 will not be construed as limiting or fettering in any way the discretion of the Council as consent authority under the Act in relation to the determination of such development consent

- 13 4 The Council must promptly (and in any event within 40 days of the submission referred to in clause 13 2) give the Developer notice whether or not the Detailed Design of the relevant Works is approved taking into consideration the Standards

- 13 5 If the Detailed Design is approved by Council in accordance with clause 13 4, the Developer must then carry out and complete the item of Works in accordance with that Detailed Design and the Standards

- 13 6 If the Detailed Design is not approved by Council in accordance with clause 13 4, then the Developer may

13 6 1 elect to amend the Detailed Design and submit to Council the amended Detailed Design, in which case the Council must identify the further information, or modifications, (as the case may be) which are required so that Council is in a position to approve the Detailed Design in accordance with this clause 13, or

13 6 2 if the Developer does not agree with the modifications requested by Council, then, it may refer the relevant matter for dispute resolution in accordance with this Deed

- 13 7 The parties agreed that the requirement to obtain the approval of the Council to the Detailed Design in accordance with clause 13 is a restriction on the issue of a Construction Certificate with respect to the relevant works

14 Variation to Work

- 14 1 The timing for provision, design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the Council and the Developer, acting reasonably, without the necessity for an amendment to this Deed

- 14 2 The Party seeking the variation must make a written request to the other Party accompanied by such information and supporting documents as is reasonably necessary to enable the other Party to properly consider the request
- 14 3 The timing for provision, design or specification of a Work is taken to be varied when the Party to whom the request is made gives its written approval to the request
- 14 4 Subject to clauses 14 5 to 14 6, the Party to whom a request under clause 14 1 is made may give or withhold its approval to the request in that Party's sole discretion
- 14 5 Without limiting clause 14 1, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work
- 14 6 The Council, acting reasonably, may from time to time give a written direction to the Developer requiring it to vary the design or specification of a Work before the Work is carried out in a specified manner and submit the variation to the Council for approval
- 14 7 The Developer must promptly comply with a direction referred to in clause 14 6 at its own cost

15 Access to land by Developer

- 15 1 The Developer must obtain the prior consent of Council to enter, occupy and use the Council Land for the purpose of performing its obligations under this Deed and must comply with all directions provided by Council, as well as Council's relevant procedures and policies regarding access, use and occupation of public land, in connection with that access
- 15 2 Nothing in this Deed creates or gives the Developer any estate or interest in the Council Land or any part of the land otherwise referred to in clause 15 1
- 15 3 The provisions of Schedule 9 apply with respect to any such access of the Council Land by the Developer
- 15 4 Pursuant to clause 38 2, the Developer acknowledges that the Council Land may not be free of Contamination. The Developer agrees that in undertaking the Flood Mitigation Works that the Developer will remediate, at its own cost, any Contamination to the standard required under Environmental Law to allow the Flood Mitigation Works to occur, including any Contamination which was caused, or likely to have been caused, by Transport for NSW required under Environmental Law to allow the Flood Mitigation Works to occur
- 15 5 Notwithstanding clause 15 4, the Council agrees that the Developer is not responsible to remediate any Contamination on Council Land that is not the subject of the Flood Mitigation Works
- 15 6 As soon as reasonably practicable after the completion of the Works the subject items 2 and 3 in **Schedule 3** and at the cost of the Developer
 - 15 6 1 the Council will grant to the Developer for the benefit of that part of Lot 100 in DP123195⁴ that is not dedicated to Council as envisaged by this Deed a right of carriage way substantially on the terms of Part 1 of Schedule 8 of the *Conveyancing Act 1919 (NSW)* and a right of foot way substantially on the terms of Part 2 of Schedule 8 of the *Conveyancing Act 1919 (NSW)* in respect of the roads and footpaths erected by the Developer under items 2 and 3 in **Schedule 3** (acknowledging that such rights so far as they relate to the roads and footpaths erected by the Developer under item 3 in **Schedule 3** might be enjoyed in common with the owner of the Arncliffe Motorway Operations Centre), and
 - 15 6 2 the Developer will grant to Council a positive covenant under section 88BA of the *Conveyancing Act 1919 (NSW)* undertaking to maintain and repair the roads and footpaths erected by the Developer under items 2 and 3 in **Schedule 3** and on terms that are the same as, or substantially similar to, the terms set out in **Schedule 10**. Each party comprising the Developer is to separately register the required positive covenant over the relevant part of the Developer Land of which the relevant party comprising the Developer is the registered proprietor of as at the date of this Deed

16 Access to land by Council

- 16 1 The Developer permits Council (as well as its officers, employees, agents and contractors) to enter any land at any time on which Work is being carried out by the Developer under this Deed in order to inspect, examine or test the Work
- 16 2 In accessing the land under clause 16 1, the Council must comply with the reasonable directions of the Developer relating to work, health and safety
- 16 3 The Council will give the Developer prior reasonable notice before it enters land under clause 16 1

17 Protection of people, property & utilities

- 17 1 The Developer must ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that
- 17 1 1 all necessary measures are taken to protect people and property,
- 17 1 2 unnecessary interference with the passage of people and vehicles is avoided,
- 17 1 3 nuisances and unreasonable noise and disturbances are prevented, and
- 17 1 4 all relevant Laws and regulations with respect to water, air, noise and land pollution (including 'pollution incidents') as defined under the *Protection of the Environment Operations Act 1997* (NSW) are complied with
- 17 2 Without limiting clause 17 1, the Developer must not obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised under this Deed, an Approval in relation to the Development or otherwise in writing by the Council or any relevant Authority

18 Repair of damage, maintenance

- 18 1 The Developer must Maintain any Work required to be carried out by the Developer under this Deed until the land on which the Work is located is dedicated or otherwise transferred to the Council or such later time as agreed between the Parties

19 Completion of Work

- 19 1 For the purpose of this Deed, an item of Works is completed when the item of Works has been accepted as, or deemed to have been, completed in accordance with this clause 19
- 19 2 If the Developer considers that an item of Works is complete, it must give the Council written notice identifying the relevant item of Works and which specifies the date on which the Developer believes the relevant item of Works was completed under this Deed (**Completion Notice**)
- 19 3 The Council must inspect the Work the subject of the Completion Notice and must provide written notice to the Developer of such an inspection within 35 days of the date specified in the Completion Notice The written notice must also set out that the relevant item of Works
- 19 3 1 have been completed, or
- 19 3 2 have not been completed, in which case the notice must also detail
- (a) those aspects of the Works which have not been completed, and
- (b) the work Council requires the Developer to carry out in order to Rectify the deficiencies in those Works
- 19 4 If Council does not provide the Developer with notice in accordance with clause 19 2 then, provided the Works have been carried out in accordance with the Detailed Design, the Works set out in the Completion Notice will be deemed to have been completed

- 19 5 Work is not taken to have been completed until any other obligation with respect to the item of Works which must be discharged prior to the completion of the item of Works in accordance with this Deed has been discharged. This clause does not apply to any condition requiring ongoing maintenance of any Works
- 19 6 Where Council serves notice on the Developer in accordance with clause 19 2 2, the Developer must
- 19 6 1 Rectify the Works in accordance with that notice, or
- 19 6 2 serve a notice on the Council that it disputes the matters set out in the notice
- 19 7 Where the Developer
- 19 7 1 serves notice on Council in accordance with paragraph 19 6 2 the dispute resolution provisions of this Deed apply, or
- 19 7 2 Rectifies the Works in accordance with paragraph 19 6 1, it must serve upon the Council a new Completion Notice for the Works it has Rectified
- 19 8 If the completed Work the subject of a notice referred to in clause 19 3 1 is
- 19 8 1 on Council Land, then the Council assumes ownership, possession, control of, and responsibility for the Work upon the issuing of that notice, and
- 19 8 2 on land that will be dedicated or otherwise transferred by the Developer to Council, then the Developer assumes the responsibility of the Works until such time that the relevant land is transferred to Council
- 19 9 The Developer, at its own cost, is to promptly comply with any written direction issued by Council in accordance with this clause 19

20 Rectification of defects

- 20 1 The Council may give the Developer a Rectification Notice concerning any Works during the Defects Liability Period
- 20 2 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms, and as soon as practicable after receipt of the Rectification Notice, and to the reasonable satisfaction of the Council
- 20 3 Council, at its absolute discretion, may enter upon the Land for the purpose of satisfying the Rectification Notice where the Developer has failed to comply with a Rectification Notice but only after giving the Developer gives (5) business days written notice of its intention to do so
- 20 4 If Council elects to exercise the step-in rights granted to it under clause 20 3 then
- 20 4 1 Council may
- (a) enter upon any part of the Land that it requires access to in order to satisfy the obligations of the Developer in accordance with the Rectification Notice, and
- (b) Rectify the relevant Defects in accordance with the Rectification Notice, and
- 20 4 2 the Developer must not impede or interfere with Council in undertaking that work
- 20 5 Where Council exercises its step-in rights under this clause 20, the Developer will be liable for the costs incurred by the Council in Rectifying the Defects
- 20 6 The Developer is taken to have complied with a Rectification Notice when it receives written confirmation from the Council that the Rectification Notice has been complied with. The Council will do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under this clause 20
- 20 7 In the event that there is a dispute as to whether the Developer has complied with a Rectification

Notice, that dispute is to be determined in accordance with clause 26 ("Dispute Resolution")

21 Works-As-Executed-Plan

- 21 1 No later than 60 days after a Work is completed for the purposes of this Deed, the Developer must submit to the Council a full works-as-executed-plan in electronic format in respect of the relevant Work
- 21 2 The Developer being the copyright owner in the plan referred to in clause 21 1, gives the Council a non-exclusive, perpetual, royalty free licence to use the copyright in the plans for the purposes of this Deed

22 Removal of Equipment

- 22 1 When Work on Council Land or other Council owned or controlled land is completed for the purposes of this Deed, the Developer, without delay, and at all times in accordance with Council's direction, must
- 22 1 1 remove any Equipment from the land and make good any damage or disturbance to the land as a result of that removal, and
- 22 1 2 leave the land in a neat and tidy state, clean and free of rubbish

Part 3 – Other Provisions

23 Covenant not to sue

- 23 1 The Parties will not bring or pursue or cause or procure a third party to bring or pursue, a Claim against each other in relation to the subject matter of this Deed, other than a claim for a breach of this Deed

24 Acquisition of land required to be dedicated

- 24 1 If the Developer does not dedicate the land required to be dedicated under this Deed at the time at which it is required to be dedicated (or is otherwise in breach of this Deed in respect of its obligations in connection with the Dedication Land), the Developer consents to the Council compulsorily acquiring that land in accordance with the Just Terms Act for compensation in the amount of \$1 (being the amount of compensation that the Developer agrees is payable to it on account of that acquisition under the Just Terms Act) without having to follow the pre-acquisition procedure under the Just Terms Act
- 24 2 Clause 24 1 constitutes an agreement between the Developer and the Council with respect to the compulsory acquisition of the Dedication Land for the purposes of s30 of the Just Terms Act
- 24 3 If, as a result of the acquisition referred to in clause 24 1, the Council is required to pay compensation to any person other than the Developer, the Developer is to pay the Council that amount upon a written demand being made by the Council, by no later than ten (10) business days of that demand for payment being made by Council (accompanied by an invoice for the amount payable and confirmation that the amount is now due and payable by Council to the other person) and, in any event, prior to the issue of the then next Occupation Certificate with respect to the Development
- 24 4 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises as a result of the Council's negligence or default
- 24 5 The Developer is to promptly do all things necessary and consents to the Council doing all things necessary, to give effect to this clause 24

25 Enforcement in a court of competent jurisdiction

- 25 1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction within New South Wales
- 25 2 This Deed is governed by the law of New South Wales

- 25 3 Each Party submits to the exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this Deed
- 25 4 For the avoidance of doubt, nothing in this Deed prevents
- 25 4 1 a Party from bringing proceedings in any court of competent jurisdiction within New South Wales to enforce any aspect of this Deed, or
- 25 4 2 Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed

26 Dispute Resolution

26 1 Notice of Dispute

26 1 1 If a Party claims that a dispute has arisen under this Deed (Claimant), it must give written notice to the other Parties (Respondents) stating the matters in dispute, adequately identifying and providing the details in dispute, stipulating what the Claimant believes will resolve the dispute, and designating as its representative a person to negotiate the dispute (Dispute Notice)

26 1 2 This paragraph does not apply to an application for urgent interlocutory relief

26 2 Response to Notice

Within 20 business days of receiving the Dispute Notice, the Respondents must notify the Claimant of their representative to negotiate the dispute

26 3 Negotiation

The nominated representatives must

26 3 1 meet to discuss the matter in good faith within 10 Business Days after service by the Respondent of notice of its representative, and

26 3 2 use reasonable endeavours to settle or resolve the dispute within 15 business days after they have met

26 4 Further Notice if not Settled

If the dispute is not resolved within 15 Business Days after the nominated representatives have met, then the parties must agree within five (5) Business Days to either refer the dispute to mediation or expert determination

26 5 Mediation

If the Parties agree that a dispute shall be mediated

26 5 1 the Parties must agree the terms of reference of the mediation within 5 Business Days before the date that the matter is required to be determined by mediation (the terms shall include a requirement that the mediation rules of the Resolution Institute apply),

26 5 2 the appointment of a Mediator will be as agreed between the Parties, or failing agreement within 5 Business Days before the date that the matter is required to be determined by mediation, either Party may request the President of the Resolution Institute to appoint a mediator,

26 5 3 the Mediator appointed pursuant to this clause 26 5 must

- (a) have reasonable qualifications and practical experience in the area of the dispute, and

- (b) have no interest or duty which conflicts or may conflict with their function as mediator, he/she being required to fully disclose any such interest or duty before their appointment;
- 26 5 4 the Parties must notify each other of their representatives who will be involved in the mediation;
- 26 5 5 the Parties agree to be bound by any mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement,
- 26 5 6 in relation to costs and expenses
 - (a) each Party will bear their own professional and expert costs incurred in connection with the mediation;
 - (b) the costs of the Mediator will be shared equally by the Parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the Mediator may require the full costs of the mediation to be borne by that party
- 26 6 **Expert Determination**
 - 26 6 1 If the parties agree that the dispute will be determined by expert determination, this clause 26.6 applies.
 - 26 6 2 The Dispute must be determined by an independent expert in the relevant field·
 - (a) agreed between and appointed jointly by the parties; or
 - (b) in the absence of agreement within five (5) Business Days after the date that the matter is required to be determined by expert determination, appointed by the President of the Law Society of New South Wales for the time being
 - 26 6 3 If the parties fail to agree as to the relevant field within five (5) Business Days after the date that the matter is required to be determined by expert determination, either party may refer the matter to the President of the Law Society of New South Wales for the time being whose decision as to the relevant field is final and binding on the parties
 - 26.6 4 The expert appointed to determine a dispute
 - (a) must have a technical understanding of the issues in dispute,
 - (b) must not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
 - (c) must inform the parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.
 - 26 6 5 The parties must promptly enter into an agreement with the expert appointed under this clause setting out the terms of the expert's determination and the fees payable to the expert
 - 26.6 6 In reaching a determination in respect of a dispute, the independent expert must give effect to the intent of the parties entering into this Deed and the purposes of this Deed.

26 6 7 The expert must

- (a) act as an expert and not as an arbitrator,
- (b) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence,
- (c) not accept verbal submissions unless both parties are present,
- (d) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party,
- (e) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute,
- (f) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes),
- (g) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party ten (10) Business Days to make further submissions,
- (h) issue a final certificate stating the expert's determination (together with written reasons), and
- (i) act with expedition with a view to issuing the final certificate as soon as practicable

26 6 8 The parties must comply with all directions given by the expert in relation to the resolution of the dispute and must within the time period specified by the expert, give the expert

- (a) a short statement of facts,
- (b) a description of the dispute, and
- (c) any other documents, records or information which the expert requests

26 6 9 The parties agree that the final determination by an expert will be final and binding upon them except in the case of fraud or misfeasance by the expert

26 6 10 If any independent expert does not award costs, each party must contribute equally to the expert's costs in making the determination

26 7 **Confidentiality of information provided in dispute resolution process**

26 7 1 The parties agree, and must procure that the mediator and the expert agree as a condition of his or her appointment

- (a) subject to paragraph 26 7 2, to keep confidential all documents, information and other material disclosed to them during or in relation to the mediation or expert determination,
- (b) not to disclose any confidential documents, information and other material except
 - (i) to a party or adviser or consultant who has signed a confidentiality undertaking, or
 - (ii) if required by Law or any Authority to do so, and

- (c) not to use confidential documents, information or other material disclosed to them during or in relation to the mediation or expert determination for a purpose other than the mediation or expert determination

26 7 2 The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings

- (a) views expressed or proposals or suggestions made by a party or the mediator or the expert during the expert determination or mediation relating to a possible settlement of the dispute;
- (b) admissions or concessions made by a party during the mediation or expert determination in relation to the Dispute; and
- (c) information, documents or other material concerning the dispute which are disclosed by a party during the mediation or expert determination unless such information, documents or facts would be discoverable in judicial or arbitral proceedings

26 8 **Litigation**

If the dispute is not finally resolved in accordance with clause 26.5 or clause 26 6, either party is at liberty to litigate the dispute.

26 9 **Exchange of information**

The Parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause is to attempt to settle the dispute between the Parties. No party may use any information or documents obtained through the dispute resolution process established by this clause for any purpose other than an attempt to settle a dispute between the Parties.

26 10 **Continue to perform obligations**

Each Party must continue to perform its obligations under this Deed, notwithstanding the existence of a dispute.

26 11 **Urgent relief**

This clause 26 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this document and does not operate to limit the availability of any remedies available to Council under the Act.

26 12 **Survival of this clause**

For the avoidance of doubt this clause survives the completion or termination of this Deed.

27 **Registration of this Deed**

27 1 The Parties agree that this Deed must be registered on the title to the Developer Land pursuant to section 7.6 of the Act.

27 2 The Developer must, at its own expense, promptly after this Deed comes into operation, and before the issue of any Construction Certificate for the Development, take all necessary and practical steps, and otherwise do anything that the Council reasonably requires, to procure.

27.2.1 the consent of each person who

- (a) has a registered estate or interest in the Developer Land, or
- (b) is seized or possessed of a registered estate or interest in the Developer Land,

27.2.2 the execution of any documents, and

- 27 2 3 the production of any relevant title documentation,
- to enable the registration of this Deed in accordance with clause 27 1
- 27.3 The Developer must use all reasonable endeavours to obtain such registration as soon as practicable and promptly after registration, deliver to the Council a title search for each part of the Developer Land confirming registration of this Deed.
- 27.4 For the avoidance of doubt, the Developer warrants that following execution of this Deed it will not take any action to grant an interest in the Developer Land to another person so as to prevent registration of this Deed on the Developer Land, as required by this Deed
- 27.5 The Parties are to do such things as are reasonably necessary to remove any notation in relation to this Deed from the title of the Developer Land once the Developer has completed its obligations under this Deed (and the Developer is not otherwise in default of this Deed) or the Deed is terminated or otherwise comes to an end for any other reason
- 27 6 Nothing in this clause 27 requires the Council to release this Deed from the title to
- 27 6 1 any land required to be transferred to the Council under this Deed prior to the transfer of the land to Council in accordance with this Deed,
- 27 6 2 any other land required to be made publicly accessible under this Deed prior to the registration of an easement on the title to that land in accordance with this Deed
- 27 7 The parties agree that the lodgment for registration of this Deed in accordance with this clause 27 is a restriction of the issue of a Construction Certificate with respect to the Development

28 Security for performance of obligations

- 28.1 The Developer must provide Security to the Council:
- 28 1 1 in the amount of \$250,000.00 in relation to the performance of its obligations under this Deed, but subject to clause 28 10, and
- 28 1 2 the following Security arrangements for the Foreshore Works
- (a) progressive Bank Guarantees up to a maximum of 110% of the undelivered Contribution Value of the Foreshore Works be provided by the Developer to Council no later than the issue of each Occupation Certificate for the Development, such that the aggregate of the progressive amount of the Bank Guarantee would reflect the proportion of the GFA which will have been released upon the issue of the relevant Occupation Certificate
 - (b) For example
 - (A) if an application for an Occupation Certificate of 20% of the total GFA is made for the Development and no Foreshore Works have been delivered at that time, then a Bank Guarantee is to be provided by the Developer to Council for 110% of 20% of the Contribution Value of the Foreshore Works; and
 - (B) if subsequent to that an application for an Occupation Certificate is made for a further 50% of the total GFA and some of the Foreshore Works have been delivered at that stage, then a further Bank Guarantee should be provided for 110% of 70% of the Certified Cost to Complete the incomplete Foreshore Works, less the amount of any Bank Guarantees already provided in respect of the Foreshore Works and still held by Council
 - (c) In calculating any Bank Guarantee to be provided under clause 28 1.2(a) regard shall be had to any Bank Guarantee held by Council under clause 28 1.3, acknowledging that, if the Developer has provided Security under clause 28 1 3

entirely by way of Bank Guarantee, then no additional Bank Guarantees are required to be provided under clause 28 1 2(a)

28 1 3 In addition to the progressive Bank Guarantees provided under clause 28 1 2(a), Security by way of an insurance bond or Bank Guarantee must be provided by the Developer to Council which covers the remaining balance of

- (a) until any Foreshore Works have been undertaken, the Contribution Value of the Foreshore Works, and
- (b) after the Developer has delivered any of the Foreshore Works, the Certified Cost to Complete the Foreshore Works at any point in time (but such Certified Cost to Complete may not be updated more regularly than each three month period),

with the intention that Council at all times holds 110% security for the incomplete Foreshore Works

28 1 4 The amount of the Security to be provided under clauses 28 1 2(a) and 28 1 3 is to be recalculated not more regularly than every three months and, where applicable, supported by a certificate setting out the Certified Cost to Complete the Foreshore Works provided by the Developer and, in the event there is a shortfall or excess amount of Security, then the parties agree to return, supplement or substitute Security to ensure the requirements of clauses 28 1 2(a) and 28 1 3 are complied with

28 2 The Developer must provide the Security under clause 28 1 1 and clause 28 1 3 to the Council prior to the issue of the first Construction Certificate in respect of the Development

28 3 The Council, in its absolute discretion and despite clause 15 may refuse to allow the Developer to enter, occupy or use any land owned or controlled by the Council or refuse to provide the Developer with any plant, equipment, facilities or assistance relating to the carrying out the Development if the Developer has not provided the Security to the Council in accordance with this Deed

28 4 The Council may call-up and apply the Security in accordance with this clause 28 to remedy any breach of this Deed notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity

28 5 The Council must release and return the Security or any unused part of it to the Developer within ten (10) business days of a request by the Developer being made for the release and return of that Security, unless

28 5 1 Council has made or intends to make a demand against any Security provided by the Developer,

28 5 2 the Development Contributions on account of which that Security was provided have not been made, or

28 5 3 the Developer is in unremedied breach of this document at the relevant time

28 6 The Developer may at any time provide the Council with a replacement Security, provided that the amount of that replacement is not less than that which is required to be provided under this Deed

28 7 On receipt of a replacement Security, the Council must release and return the Security that has been replaced to the Developer

28 8 If the Council calls-up the Security or any portion of it, it may, by written notice to the Developer, require the Developer to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Deed

28 9 The Developer must ensure that, on an annual basis from the date of operation of this Deed, the Security provided to the Council is at all times maintained to the full current indexed value (as indexed in accordance with clause 6 3)

28 10 The following provisions of this clause 28 10 allow the Developer, subject to clause 28 10 9, to

provide additional Security to enable the issue of an Occupation Certificate for GFA in the Development, notwithstanding that a Hold Point Development Contribution is not delivered by the time required under this Deed

28 10 1 If the Developer has not provided any Hold Point Development Contribution by the time required under either clause 6 4 1 or **Schedule 3** (disregarding the operation of this clause 28 10), and as a consequence an Occupation Certificate which might otherwise be issued cannot be issued, then the Developer may, subject to clause 28 10 9, elect to provide to the Council Security equal to 110% of the Certified Cost to Complete the incomplete Works

28 10 2 If the Developer provides to the Council Security in accordance with clause 28 10 1, then any Occupation Certificate which would otherwise be required by this Deed to not be issued, including under clause 12 5 is not required to be withheld and may be issued

28 10 3 The Council

- (a) agrees to provide such confirmations within 5 Business Days to any private certifier appointed to the Development as may reasonably be requested by the Developer to establish what Security has been provided to the Council under clause 28 10 1, and
- (b) authorises any such private certifier to rely on such confirmations without further enquiry

28 10 4 The Developer may, at its election, but not less than 3 months after providing Security under clause 28 10 1 or after last substituting that Security under this clause 28 10 4, provide to Council an updated Certified Cost to Complete the incomplete Works, and Council and the Developer agree to substitute any Security held by Council for such incomplete Works with new Security equal to 110% of the Certified Cost to Complete the incomplete Works, in accordance with the substitution arrangements in clause 28

28 10 5 Upon completion of such incomplete Works the Council must release and return the Security or any unused part of it to the Developer within ten (10) business days of a request by the Developer being made for the release and return of that Security

28 10 6 Security provided under this clause 28 10 may be accessed by the Council in accordance with the provisions of this clause 28

28 10 7 This clause 28 10 does not apply to any Security relating to the Foreshore Works, which is covered by the arrangements in clause 28 1 2

28 10 8 Clause 28 10 does not operate to permit the Developer to provide any Works Contribution by a date after the earlier of the Sunset Date and any New Completion Date for a Works Contribution nominated in respect of any Works Contribution Without limiting the previous sentence, if the Developer has not provided in full any Development Contribution by the earlier of the Sunset Date and any New Completion Date for a Works Contribution nominated in respect of any Works Contribution, then

- (a) the Developer is in breach of this Deed,
- (b) the Developer must immediately take all steps to deliver any such Development Contribution in full,
- (c) Council may call-up and apply the Security in accordance with this clause 28 4 to ensure the delivery in full of any Development Contribution not delivered by the Sunset Date, and
- (d) no Occupation Certificate may be issued after the earlier of the Sunset Date and any New Completion Date for a Works Contribution nominated in respect of any

Works Contribution and must be withheld until the Developer has provided in full all Development Contributions.

28.10.9 Notwithstanding anything else in this clause 28.10, the provision of Security to allow an Occupation Certificate to be issued notwithstanding that a Works Contribution has not been delivered by the date required under this Deed is limited and Council has the right to impose a new date for completion of the Works Contribution (the "**New Completion Date for a Works Contribution**") not then completed. To give effect to this principle the parties agree that

- (a) if the Developer makes an election under clause 28.10.1, then Council may nominate a New Completion Date for a Works Contribution in respect of the Works Contribution not delivered and the subject of the Developer's election under clause 28.10.1, such nominated New Completion Date for a Works Contribution to be a date which Council determines in its absolute discretion, and
- (b) if the relevant Works Contribution has not been delivered by the New Completion Date for a Works Contribution, then Council may, at its absolute discretion, either
 - (A) at the request of the Developer, and in Council's absolute discretion, nominate a further New Completion Date for a Works Contribution for that Works Contribution, or
 - (B) refuse to nominate a further New Completion Date for a Works Contribution for that Works Contribution, in which case clause 28.10.8 shall apply with respect of the relevant Works Contribution by reference to the last New Completion Date for a Works Contribution nominated by Council.

29 Breach of obligations

29.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer

29.1.1 specifying the nature and extent of the breach,

29.1.2 requiring the Developer to

- (a) rectify the breach if it reasonably considers it is capable of rectification, or
- (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification.

29.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances

29.2 If the Developer fails to comply with a notice given under clause 29.1, the Council may (in addition to any rights it has at Law) call up the Security provided by the Developer under this Deed and apply it to remedy the Developer's breach, and step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose

- 29 3 Any costs incurred by the Council in remedying a breach in accordance with clause 29 2 may be recovered by the Council by either or a combination of the following means
- 29 3 1 by calling up and applying the Security provided by the Developer under this Deed, or
- 29 3 2 as a debt due in a court of competent jurisdiction
- 29 4 For the purpose of clause 29 3, the Council's costs of remedying a breach the subject of a notice given under clause 29 1 include, but are not limited to
- 29 4 1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
- 29 4 2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
- 29 4 3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach
- 29 5 Nothing in this clause 29 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court

30 Trustee Limitation of Liability

- 30 1 This clause applies to each Party that enters into this Deed only in its capacity as trustee (**Trustee**) of a trust (**Trust**) and in no other capacity
- 30 2 Subject to clause 30 4, a liability arising under or in connection with this Deed is limited to and can be enforced against the Trustee only to the extent to which it can be satisfied out of property of the Trust out of which the Trustee is actually indemnified for the liability. This limitation of the Trustee's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed
- 30 3 Subject to clause 30 4, the parties other than the Trustee may not sue the Trustee in any capacity other than as trustee of Trust, including seeking the appointment of a receiver (except in relation to property of Trust), a liquidator, an administrator or any similar person to the Trustee or prove in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to property of Trust)
- 30 4 The provisions of this clause shall not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because under the trust deed establishing the Trust or by operation of law there is a reduction in the extent of the Trustee's indemnification out of the assets of Trust, as a result of the Trustee's fraud, negligence or breach of trust

31 Assignment and transfer

- 31 1 Unless the matters specified in clause 31 2 are satisfied, and whilst the obligations in this Deed have not been completed, the Developer is not to do any of the following
- 31 1 1 to Assign the Developer Land to any person, or
- 31 1 2 Assign to any person the Developer rights or obligations under this Deed
- 31 2 The matters required to be satisfied for the purposes of clause 31 1 are as follows
- 31 2 1 this Deed has been registered on the title of the Developer Land in accordance with Clause 27,
- 31 2 2 the Developer has, at no cost to Council, first procured the execution by the person to whom the Developer rights or obligations under this Deed are to be Assigned, of an agreement in favour of the Council Assigning those rights or obligations to the person on terms satisfactory to Council acting reasonably and the provision of all Security to Council by that assignee that the Developer is required to provide under this Deed (and any

additional securities if required by Council acting reasonably) at the same time as, or prior to, entering into that Deed,

31 2 3 Council, by notice in writing to the Developer, which will not be unreasonably withheld, has stated that evidence satisfactory to Council has been produced to show that the assignee or novatee, is reasonably capable of performing its obligations under this Deed,

31 2 4 the Developer is not in breach of this Deed, and

31 2 5 Council otherwise consents to the Assignment in writing which will not be unreasonably withheld

31 2 6 Council is under no obligation to consider granting its consent to any request made by the Developer under this clause if, at the time the request is made, the Developer is in breach of this Deed

32 Notices

32 1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways

32 1 1 delivered or posted to that Party at its address set out in the Contacts Sheet

32 1 2 emailed to that Party at its email address set out in the Contacts Sheet

32 2 If a Party gives the other Party 3 Business Days' notice of a change of its address or email address, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address or email address

32 3 Any notice, consent, information, application or request is to be treated as given or made if it is,

32 3 1 delivered, when it is left at the relevant address

32 3 2 sent by post, 2 Business Days after it is posted

32 3 3 sent via email (unless the sender receives notification to the effect that the email has failed to send), at the time it was sent

32 4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, or if on a Business Day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day

33 Costs

The Developer agrees to pay or reimburse the reasonable legal costs and disbursements of Council

33 1 1 for the negotiation, preparation and execution of this Deed, and

33 1 2 arising from the ongoing administration and enforcement of this Deed including in relation to

(a) the registration or removal of this Deed on the title to the Developer Land, and

(b) any breach or default by the Developer of its obligations under this Deed,

within ten (10) business days of receipt of a tax invoice from Council

34 Entire Agreement

34 1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with

- 34 2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law

35 Further Acts

- 35 1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it

36 Joint and individual liability and benefits

- 36 1 Except as otherwise set out in this Deed

36 1 1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and

36 1 2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually

37 No fetter

37 1 Consent authority

The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation

37 2 Deed does not fetter discretion

This Deed is not intended to operate to fetter, in any unlawful manner

37 2 1 the power of Council to make any Law, or

37 2 2 the exercise by Council of any statutory power or discretion,

(Discretion)

37 3 Severance of provisions

37 3 1 No provision of this Deed is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this Deed is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree

(a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 37 is substantially satisfied, and

(b) in the event that paragraph 37 3 1(a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this Deed has full force and effect, and

(b) to endeavour to satisfy the common objectives of the parties on relation to the provision of this Deed which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment

37 3 2 Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this Deed contracted out of a provision or exercised a Discretion under this Deed, then to the extent of this Deed is not to be taken to be inconsistent with the Law

37 4 No Obligations

Nothing in this Deed will be deemed to impose any obligation on Council to exercise any of its

functions under the Act in relation to the Instrument Change, the Land or the Development in a certain manner

38 Representations and warranties

- 38 1 Each Party represents and warrants to each other Party that they have power to enter into this Deed and comply with their obligations under this Deed and that entry into this Deed will not result in the breach of any law
- 38 2 Notwithstanding anything in this Deed, Council makes no representation or warranty whatsoever that the Council Land is free from Contamination

39 Severability

- 39 1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way
- 39 2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected

40 Waiver

- 40 1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party
- 40 2 A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given
- 40 3 It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion

41 Rights cumulative

- 41 1 Except as expressly stated otherwise in this Deed, the rights to a Party under this Deed are cumulative and are in addition to any other rights of that Party

42 Duty

- 42 1 The Developer is liable for and must pay all duty (including any fine or penalty except where it arises from default by another Party) on or relating to this Deed, any document executed under it or any dutiable transaction evidenced or effected by it

43 Effect of Schedules

- 43 1 Each Party agrees to comply with any terms contained in the Schedules to this Deed as if those terms were included in the operative part of this Deed

44 Relationship of the Parties

- 44 1 This Deed is not intended to create a partnership, joint venture or agency relationship between the Parties

45 GST

- 45 1 In this clause

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply

GST Law has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 (Cth)

Input Tax Credit has the meaning given by GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under GST Law

Taxable Supply has the meaning given by GST Law excluding (except where expressly agreed otherwise) a Supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount on GST on that Supply

- 45 2 Subject to clause 45 3, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration
- 45 3 Clause 45 2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive Unless otherwise expressly stated, prices or other sums payable or Consideration to be provided under or in accordance with this Deed are exclusive of GST
- 45 4 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to division 81 of the A New Tax System (Goods and Services Tax) Act 1999, each Party agrees
- 45 4 1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies,
- 45 4 2 that any amounts payable by each Party in accordance with clause 45 2 (as limited by clause 45 3) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount
- 45 5 No payment of any amount pursuant to this clause 45, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note, as the case may be, to the recipient
- 45 6 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a Party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability
- 45 7 This clause continues to apply after expiration or termination of this Deed

46 Explanatory Note relating to this Deed

- 46 1 The **Appendix** contains the Explanatory Note relating to this Deed required by clause 205 of the Regulation
- 46 2 Pursuant to clause 205(5) of the Regulation, each Party agrees that the Explanatory Note in the **Appendix** is not to be used to assist in construing this Deed

Execution

Executed as a deed

17 date: MARCH 2025

Executed by Bayside Council ABN 80)
690 785 443 by its authorised delegate)
pursuant to section 377 of the Local
Government Act 1993 in the presence of

[Redacted Signature]

General Manager (sign)

[Redacted Name]

Name of Acting General Manager (print)

[Redacted Signature]

Witness (sign)

[Redacted Name]

Witness – Name/Position (print)

[Redacted Name/Position]

Executed by Cook Cove Nominees)
No 1 Pty Ltd in its Capacity as the)
trustee of the Cook Cove Property
Trust 1 in accordance with section
127(1) of the Corporations Act 2001
(Cth)

[Redacted Signature]

Company Secretary/Sole Director

[Redacted Name]

Name of Company Secretary/Sole
Director (print)

Executed by Cook Cove Nominees)
No 2 Pty Ltd in its capacity as the)
trustee of the Cook Cove Property
Trust 2 (ACN 672 807 046) in
accordance with section 127(1) of the
Corporations Act 2001 (Cth)


Company Secretary/Sole Director


Name of Company Secretary/Sole
Director (print)

Schedule 1 – Section 7.4 Requirements

Provision of the Act	This Deed
Under section 7 4(1), the Developer has	
(a) Sought a change to an environmental planning instrument	Yes
(b) Made, or proposes to make, a Development Application	Yes
(c) Entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies	No
Description of the land to which this agreement applies	The Land described in Schedule 2 to this Deed
Description of the change to the environmental planning instrument or the development to which this agreement applies (section 7.4(3)(b))	See definition of <u>Development and Planning Proposal</u>
The scope, timing and manner of delivery of Development Contributions required by this agreement – (Section 7.4(3)(c))	See Schedule 3
Applicability of Sections 7.11, 7.12 and Division 7.1, Subdivision 4 of the Act	See clause 5
Benefits under the Agreement considered for Section 7.11 purposes – (Section 7.4(3)(e)),	Not applicable
Dispute Resolution – (Section 7.4(3)(f))	See clause 26
Enforcement – (Section 7.4(3)(g))	See clause 28
Registration of the Agreement – (Section 7.6)	Yes, see clause 27

Schedule 2 – The Land

Description	Lot Number	Deposited Plan	Owner
Developer Land			
19 Marsh Street Arncliffe, NSW, 2205	Lot 31	DP1231486	Cook Cove 1
19A Marsh Street Arncliffe, NSW, 2205	Lot 100	DP1231954	Cook Cove 2
Council Land			
19 Marsh Street Arncliffe, NSW, 2205	Lot 14	DP213314	Council
13 Marsh Street Arncliffe, NSW, 2205	Lot 1	DP108492	Council

Schedule 3 – Development Contribution

Item No.	Public Purpose	Manner and Extent	Value of Contribution	Timing
CARRYING OUT OF WORK				
1	Gertrude Street extension and upgrade	Carrying out and completion of the following works 1 Construction of extension of Gertrude Street between Marsh Street and Levey Street as contemplated by item WC3 3 1 of the Contributions Plan and indicatively shown as 1A in the Development Contribution Plan 2 Construction of new roundabout and kerb realignment at the intersection of Gertrude Street and Levey Street as indicatively shown 1B in the Development Contribution Plan 3 Widening of Gertrude Street north side between Princes Highway and Levey St as contemplated by item WC3 3 4 of the Contributions Plan and as indicatively shown as 1C in the Development Contribution Plan	New public road between Marsh Street and Levey Street – Estimated Cost \$2,536,585 Construction of new roundabout and kerb realignment at the intersection of Gertrude Street and Levey Street (value included above) Gertrude Street north side widening and lane reconfiguration – Estimated Cost \$2,328,125	To be delivered prior to the earlier of the Sunset Date and the issue of the first Occupation Certificate for development creating new Gross Floor Area within the Developer Land arising from the Instrument Change

Item No.	Public Purpose	Manner and Extent	Value of Contribution	Timing
2	Extension of Gertrude Street East	Carrying out and completion of the following works 1 Construction of the extension of Gertrude Street East in the location indicatively shown as Item 2 in Schedule 5 - Development Contribution Plan The extension located on Lot 14 will be a private road with the benefit of a right of carriage way and right of foot way as described in clause 15 6	Construction of part access roads over Lot 14, which will provide improved access to Pemulwuy Park Estimated Cost \$9,300,000	To be delivered prior to the earlier of the Sunset Date and the issue of the first Occupation Certificate for development creating new Gross Floor Area within the Developer Land arising from the Instrument Change
3	Extension of Flora Street East	Carrying out and completion of the following works 1 Construction of the extension of Flora Street East in the location indicatively shown as Item 3 in Schedule 5 - Development Contribution Plan	Value of contribution included in Item No 2 above	To be delivered by the Developer to Council prior to the earlier of the Sunset Date and the issue of the first Occupation Certificate for development creating new Gross Floor Area within the Developer Land arising from the Instrument Change
4	Public open space - Cooks River Foreshore	Carrying out and completion of the following works 1 Construction of publicly accessible shared pathway and associated hard and soft landscaping, 2 Capping and protection of ethane gas pipeline, and 3 Seawall demolition and construction	Site preparation and remediation of foreshore area Estimated cost \$531,523 Embellishment of foreshore area Estimated cost \$17,932,578 Cooks River boardwalk Estimated cost \$9,358,624 Regional pedestrian/cycleway between Levey Street	To be delivered prior to the earlier of the Sunset Date and issue of any Occupation Certificate for GFA for the last building in the Development arising from the Instrument Change 50% by Value of Contribution of these works are to be delivered prior to the Hold Point

Item No.	Public Purpose	Manner and Extent	Value of Contribution	Timing
			and southeast corner of the site Estimated cost \$521,994	
5	Publicly accessible open space – Fig Tree Plaza	Carrying out and completion of the following works 1 Construction and embellishment of publicly accessible open space and associated hard and soft landscaping in the area indicatively shown as item 7 in the Development Contribution Plan	Estimated cost of \$10,528,498	To be delivered prior to the earlier of the Sunset Date and the issue of any Occupation Certificate for GFA for the last building in the Development arising from the Instrument Change but subject to clause 28 10 ,
6	Flood mitigation works – Pemulwuy Park	Carrying out and completion of the following works 1 Construction and delivery of necessary landform contouring works and any necessary culverts under the road infrastructure on proposed lots 4-9, 13 and 14 in the Draft Subdivision Plan as required to achieve a compliant flood mitigation outcome consistent with any relevant conditions of consent, with such area to be turfed but not embellished on completion of those works For the avoidance of doubt, any works associated with the new Green and Golden Bell Frog habitat arising from conditions of development consent of the adjacent M8 (SSI6788) and M6 Stage 1 (SSI8931) motorway projects are not and will not be at any time the responsibility of the Developer	Estimated cost will be determined when the design of the future Pemulwuy Park is resolved with reference to the implemented TfNSW Urban Design Landscape Plan for the temporary M6 Arncliffe compound	To be delivered by the Developer to Council prior to the earlier of the Sunset Date and the issue of any Occupation Certificate for GFA for the last building in the Development arising from the Instrument Change, but subject to clause 28 10 50% by monetary value of these works are to be delivered prior to the Hold Point, but subject to clause 28 10

Item No.	Public Purpose	Manner and Extent	Value of Contribution	Timing
7	Pemulwuy Park - embellishment	Carrying out and completion of the following works over the land generally in the location shown as proposed lot 14 in the Draft Subdivision Plan: 1 Construction and base level embellishment of publicly accessible open space (i.e. turf), and 2 Construction of single pedestrian / cycle pathway to connect the foreshore footpath to Pemulwuy Park.	Estimated base level embellishment cost and construction of single pedestrian / cycle pathway to connect the foreshore footpath to Pemulwuy Park \$2,657,499	To be delivered prior to the earlier of the Sunset Date and the issue of any Occupation Certificate for GFA for the last building in the Development arising from the Instrument Change, but subject to clause 28.10.
DEDICATION OF LAND				
8	Open space and recreation	Dedication to the Council free of cost to the Council not less than 0.3ha of land as public open space generally in the location shown as proposed lot 8 in the Draft Subdivision Plan.	Land dedicated free of cost.	The land is to be dedicated upon the earlier of the completion of the Work (to Council's satisfaction) that is located on the proposed lot or prior to the Sunset Date or Hold Point, subject to clause 9.8.
9	Public Road	Dedication to the Council free of cost to the Council that part of the Flora Street East extension that comprises part of the Development Land, being the land generally in the location shown as proposed lot 9 in the Draft Subdivision Plan.	Land dedicated free of cost	The land is to be dedicated upon the earlier of the completion of the Work (to Council's satisfaction) that is located on the proposed lot or prior to the earlier of the Sunset Date or: 1. the issue of an Occupation Certificate for development within the area known as Block 3C of the Developer Land arising from the Instrument Change; and 2. the Hold Point,

Item No.	Public Purpose	Manner and Extent	Value of Contribution	Timing
				but , subject to clause 9 8
10	Open space and recreation	Dedication to the Council free of cost to the Council not less than 0 7ha of land as public open space generally in the location shown as proposed lot 14 in the Draft Subdivision Plan	Land dedicated free of cost	The land is to be dedicated upon the earlier of the completion of the Cooks River Foreshore Work (to the satisfaction of any relevant Authority) contemplated by Item 4 in this table or prior to the issue of any Occupation Certificate of the last building in the last stage of the Development, subject to clause 9 8, or prior to the Sunset Date
MONETARY CONTRIBUTION				
11	Pemulwuy Park, Riverine Park & active transport links	The Developer is to pay to the Council a monetary contribution of \$15,044,860 and indexed in accordance with clause 8	\$15,044,860	The payment of the monetary contribution is to occur in stages as follows 1 The Developer is to be pay the Council \$1,000,000 by the date that is 12 months from the date that the Instrument Change becomes effective under section 3 24(5) of the Act, 2 The remaining \$14,044,860 is to be paid in instalments in accordance with clause 7 and 8, provided that 80% of such balance must be paid by the earlier of the Hold Point or the Sunset Date

Item No.	Public Purpose	Manner and Extent	Value of Contribution	Timing
FORESHORE EASEMENT				
12	Public open space - Cooks River Foreshore	Registration of the Foreshore Easement on the title to the Developer Land in relation to the Foreshore Works on the terms set out in Schedule 7 in relation to the land shown in Schedule 8 of this Deed The Developer proposes to grant an easement to Council early in the Development over an area 1 larger than, and wholly encompassing, the likely location of the proposed pedestrian / cycleway and other deliverables in that location, but 2 excluding any area where access by the public is incompatible with the environment, or public use is not permitted under any Environmental Law on the basis that 3 the easement will have a commencement date when the public can enjoy the easement, being the later of • when it is safe for the public to access those areas, and • when the Foreshore Works are completed,	Easement granted free of cost	Easement to be granted prior to the Hold Point Public access to be provided upon the earlier of the Sunset Date and the final Occupation Certificate for the Development

Item No.	Public Purpose	Manner and Extent	Value of Contribution	Timing
		but in any event not later than the earlier of the Sunset Date and the final Occupation Certificate for the Development, or such later date as agreed by the Developer and Council in writing, and 4 The easement will be a “shrinking easement” whereby on completion of the relevant works the easement site will reduce to the actual surveyed location of the proposed pedestrian / cycleway and other deliverables in that location, in each case as detailed in Schedule 7 Registration of the easement in this form satisfies the Developer’s obligations under this Item 12 The Developer acknowledges that Council requires that a party of substance must be the owner of the land burdened by the Foreshore Easement (“Lot Burdened”) so as to ensure that the obligations of the owner of the Lot Burdened will be complied with at all times These requirements will be satisfied if • The Lot Burdened forms part of the community property under a community management scheme where at least 75% of the GFA of the Development is comprised within that community management scheme, or		

Item No.	Public Purpose	Manner and Extent	Value of Contribution	Timing
		- The Lot Burdened forms part of a lot where at least 50% of the GFA of the Development is comprised within that lot, or - A covenant is placed on title to the lot burdened which benefits Council which prevents the Lot Burdened from being transferred separately from a lot where at least 50% of the GFA of the Development is comprised within that lot, or - A positive covenant which benefits Council is placed on title to a lot or lots where at least 50% of the GFA of the Development is comprised within that lot, In whichever case, to the reasonable satisfaction of Council The Developer is to present its titling and subdivision strategy to Council and demonstrate that the Developer's titling and subdivision strategy will satisfy this requirement		

Schedule 4 - Standards

1 General

The standards referred to in this Schedule 4 are included for information purposes only, and as a guide to the relevant standards for the general nature of the work of the relevant Works. The Council makes no representation or warranty whatsoever as to the currency of the standards identified, or their application to the final design of any particular element. If any standard is replaced or supplemented, then a reference will be deemed to include any other standards as may replace or supplement that standard.

2 Conflict

In the event that any Australian Standard prescribes or describes a different level of material, finish, work or workmanship, than those contained in any Council Standard, then the higher of the two standards will apply. In the event that one or more Council Standards conflict with another Council Standard, then the Council must nominate the correct and applicable Council Standard. The Council's decision as to the applicable standard in the event of conflict is final.

3 Australian Standards relevant to.

- Road design
- Car park design
- Seawall construction

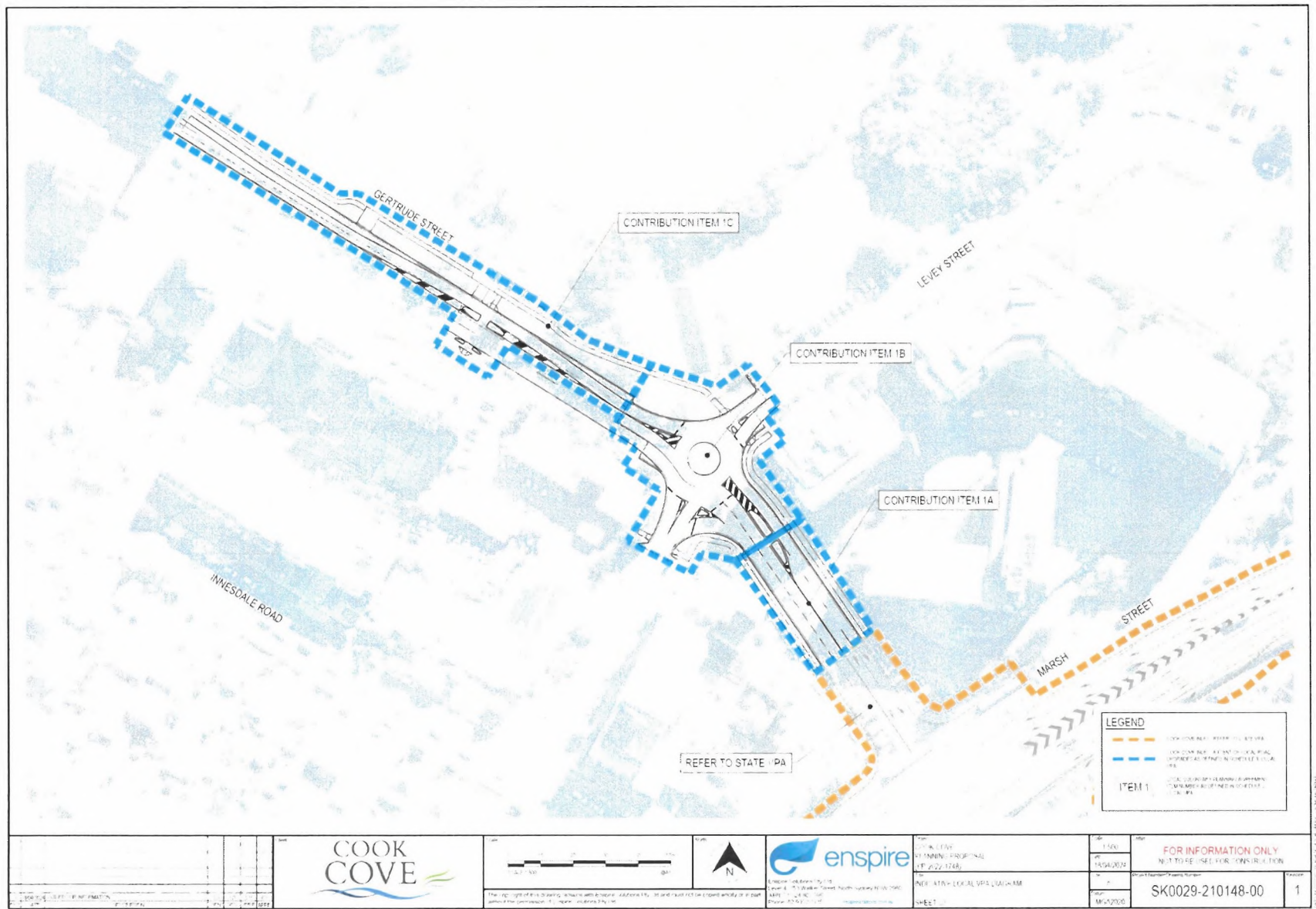
4 Council Standards (All Works)

Bayside Council Technical Specifications

- Stormwater management
- Landscape
- Traffic, Parking and Access

Schedule 5 – Development Contribution Plan





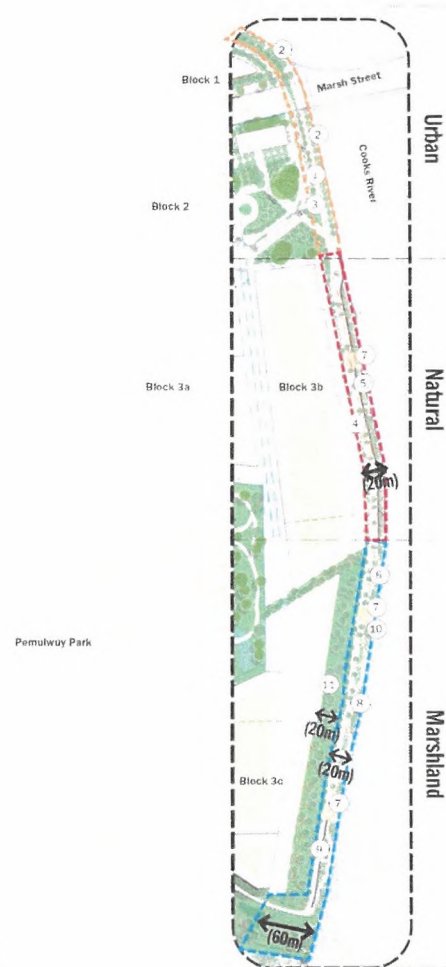
Foreshore Zone Indicative Concept Drawings – items 6(1), 6(2), 6(3) and 6(4)

General scope of works

- Site establishment and environmental protection
- Capping and protection of ethane gas pipeline
- Seawall demolition and construction
- Earthworks and remediation
- Stormwater drainage
- Utilities infrastructure
- Hard landscape works including pathways, boardwalks and lookouts
- Shared cycle path – (nominated as 4m as per regional cycle path requirements in AusRoads Part6A 5.1.3 Bicycle Paths)
- Soft landscaping including trees and irrigation
- Furniture, bins and lighting
- Wayfinding signage

Notes:

- Hassell Reference Drawings LSK 4000, LSK 4001, LSK 4002 dated 23 April 2004
- All works are subject to detailed design and authority approvals at Development Application stages
- Extent of seawall construction to be confirmed as part of detailed design stage
- Sandstone block seawall finish to be similar to Cahill Park



Cooks River Foreshore Plan

The Cooks River foreshore is a 20m wide landscaped corridor approximately 1km in length. The foreshore will provide public waterfront access via pedestrian walkways and a separated two-way cyclepath. There will be areas of ecological restoration and salt marsh planting with boardwalks and lookouts.

The Cooks River Foreshore will be an exciting new waterfront destination for the surrounding community, visitors and workers within the adjacent development. Accessible to the public, the foreshore will connect with the existing Cahill Park to the north and the new Pemulwuy Park to the south. There will also be safeguarding for future pedestrian and cycle connections to the south over the existing SWSOOS, which will provide a regional link to the south, connecting with a future Muddy Creek crossing and existing pathways to Kyeemagh and Sans Souci.

The proposed foreshore aims to achieve the following outcomes:

- Maximise public and visual access
- Provide a dedicated two-way cyclepath, and safeguard for a future cycle link to the south over the SWSOOS (by others)
- Provide a diverse and natural pedestrian waterfront experience through promenades, walkways and boardwalks
- Provide ecological restoration and habitat creation with mangroves and salt marsh planting

- Preserve corridor views to the adjacent Pemulwuy Park, and open views to the Cooks River
- Maximise public safety with pedestrian lighting and visual surveillance from the adjacent development.

LEGEND

- 1 Landscaped promenade
- 2 Boardwalk steps
- 3 Landscaped buffer to road
- 4 Landscaped embankment
- 5 Mangroves between MHWs and MWL
- 6 Elevated pedestrian boardwalk
- 7 Lookout nodes
- 8 Landscaped esplanade with semi-aquatic planting
- 9 Cycle path
- 10 Kiosk pull up zone with shelter and information signage
- 11 20m riparian corridor within development fence line not publicly accessible

Legend

- Restoration Equipment
- Low Elevation
- Planning proposal boundary



Images

- 1 Westward Riverfront by Hiesult. Photo: Isabel Tang
- 2 Hornsberg Strandpark by Nyberg Arkitektkontor. Photo: Åke-Erik Lindman
- 3 Narrabeen Lagoon by Aspect Studios. Photo: Simon Wood
- 4 Pemulwuy River Banks by BASE. Photo: BASE



REVISION
A: For Information

DATE
23 April 2024

SCALE
1:4000 (A3)

CLIENT
Boyd Properties

PROJECT NAME
Cooks Creek Concept Masterplan

DRAWING NUMBER
Public Open Space - Cooks River Foreshore
LSK 4000



Indicative layout only - not for construction

The Cooks River Foreshore will be designed with three key typologies that respond to the surrounding context and adjacent future development - an Urban Edge, Natural Edge and Marshland Edge.

An urban edge is proposed adjacent to the Fig Tree Plaza, including a shaded pedestrian promenade and terraced waterfront that allows access to the water's edge

A natural edge is proposed adjacent to the Block 3 development including a walkway and cycleway behind a rock seawall

The southern end of the foreshore includes a marshland edge that includes an ecological tidal zone with mangroves and saltmarsh that provides habitat for birds and marine life while a meandering boardwalk allows pedestrians to experience the marshland environment

The design of the Cooks River Foreshore will:

- Provide bed and bank stability and reduce bank and channel erosion
- Protect water quality by trapping sediment nutrients and other contaminants
- Provide a diversity of habitats for terrestrial riparian and aquatic plants (flora) and animals (fauna)
- Provide connectivity between wildlife habitats
- Convey flood flows and controlling the direction of flood flows
- Act as an interface and/or buffer between developments and waterways



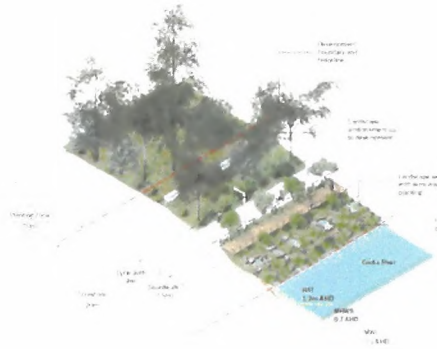
Cooks River Foreshore Visualisation - Indicative only

H		REVISION A - Information	DATE 21 April 2024	SCALE N/A - A3	CLIENT Bovet Properties	PROJECT NAME Cooks River Open Space Masterplan	DRAWING NUMBER Public Open Space - Cooks River Foreshore CNR_4001
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For information - consult only - not for construction

Marshland Edge

Tidal saltmarsh with elevated boardwalk and cycle path



Precedent image: Narrabeen Lagoon by Aspect
Sydney, Australia

Natural Edge

Walkway and cyclepath behind a rock seawall



Precedent image: Hunter Point South Waterfront Park by SWA BALSLEY + WEISS MANFREDI
Long Island, USA

Urban Edge

Walkway, cyclepath and terraced water edge



Precedent image: Zuidwestoever by Grijzen + Stadstuurme
Amsterdam, Netherlands

H

REVISION
A For information

DATE
23 April 2024

SCALE
NTS is A3

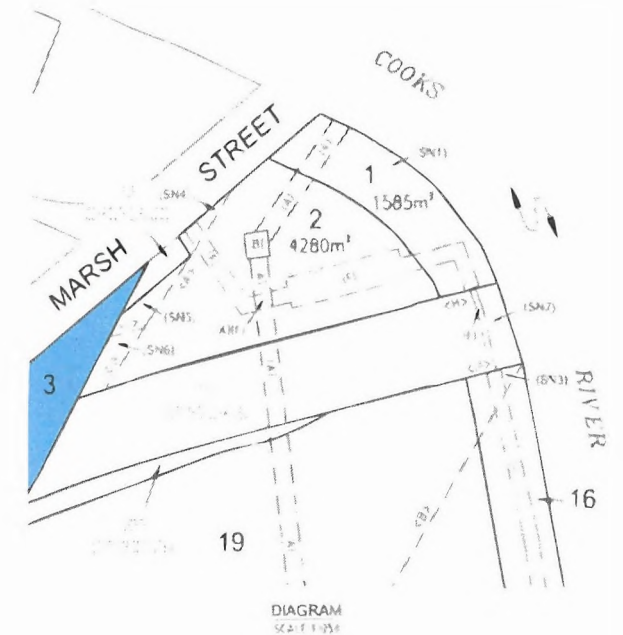
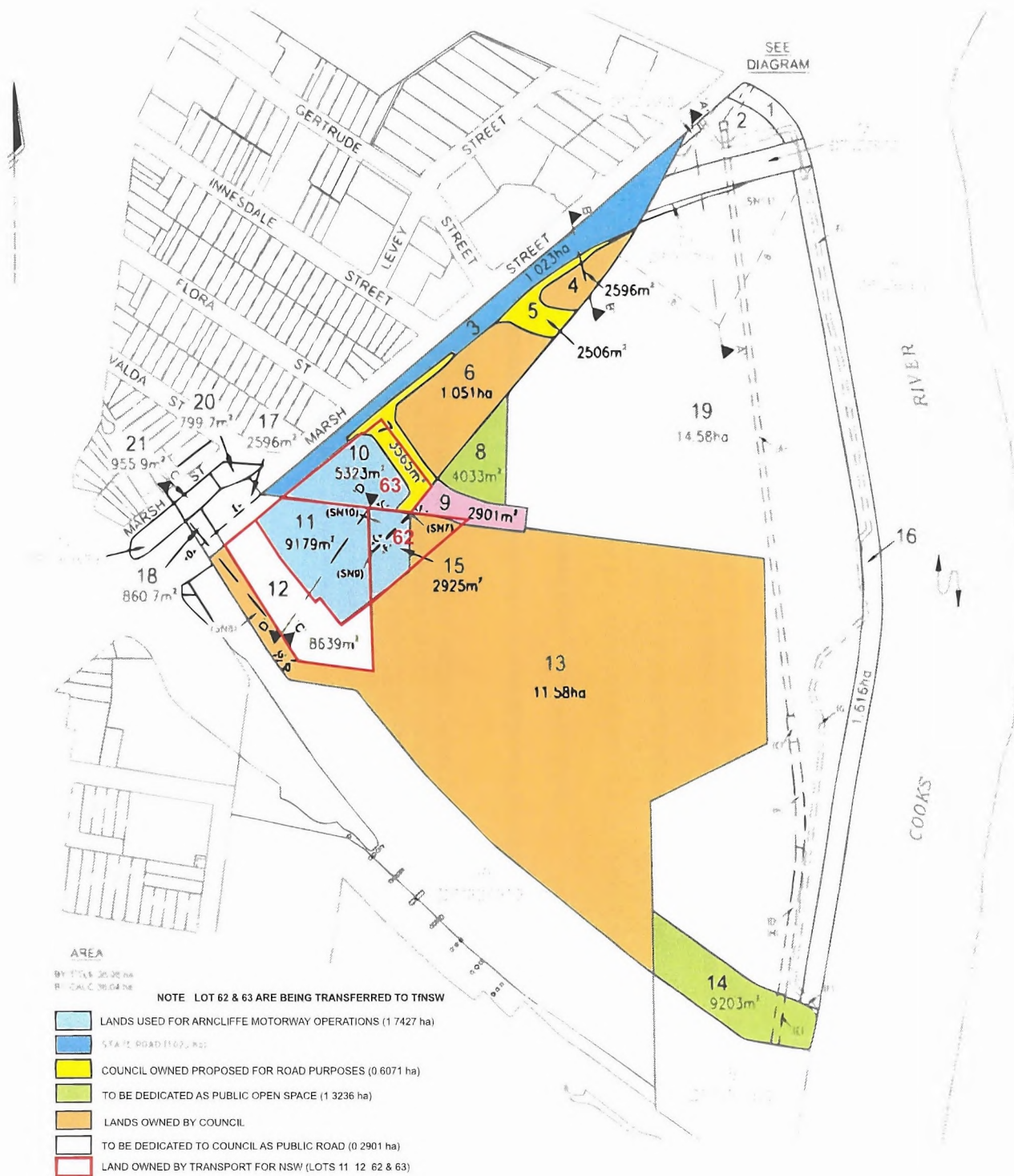
CLIENT
Boyd Properties

PROJECT NAME
Cooks Cove Concept
Masterplan

DRAWING NUMBER
Public Open Space - Cooks
Rivers Frontside
LSK 4602

Indicative layout only - not for construction

Schedule 6 – Draft Subdivision Plan



STRATUM NOTES

LOT 2 UNLIMITED IN HEIGHT & DEPTH EXCEPT FOR THOSE PARTS DESIGNATED (SNH) & (SN) AND SHOWN IN SECTION A-A ON SHEET 2
(SNH) DENOTES LOT 1 IS UNLIMITED IN HEIGHT AND LIMITED IN DEPTH TO RL40
(SN) DENOTES LOT 1 IS UNLIMITED IN HEIGHT AND LIMITED IN DEPTH TO RL40

NOTE

ORIGINAL TITLES 1108462 14213114 311231488 1001231054 1021231054 & 2004-201 ARE AFFECTED BY SUBS STRATUM ACQUISITIONS SHOWN WITH THE NOTATIONS BE NG DP1224219 DP 276465 DP1224223 DP 276467 DP 224202 DP127775 & DP1231488 BUT NO GAZETAL OR TITLE CREATION HAS TAKEN PLACE
ACQUISITION STRATUM NOTES SHOWN ON SHEET 3

- 1A) AC198588 EASEMENT FOR WATER SUPPLY PURPOSES 6 WIDE DP127790
- B) DP152396 EASEMENT FOR WATER SUPPLY PURPOSES 8 WIDE
- C) AC198588 EASEMENT FOR WATER SUPPLY PURPOSES 8 WIDE DP127901
- D) AC198588 EASEMENT FOR WATER SUPPLY PURPOSES 8 WIDE DP152396
- E) AC198588 EASEMENT FOR WATER SUPPLY PURPOSES 8 WIDE DP152396
- F) 233528 EASEMENT FOR PIPE LAYING 2.5 M WIDE & VARIABLE DP190046
- G) 233528 EASEMENT FOR PIPE LAYING 2.5 WIDE DP190046
- H) DP152396 EASEMENT FOR WATER SUPPLY PURPOSES 9 WIDE DP152396

- A) BOUNDARY OF LOTS 12 13 14 IN DP 233646 BELOW
- B) BOUNDARY OF ACQUISITION LOTS 33 A 33 IN DP 1224219 BELOW
- C) BOUNDARY OF ACQUISITION LOTS 32 B 32 IN DP 1224219 BELOW
- D) BOUNDARY OF ACQUISITION LOTS 33 A 33 IN DP 1224219 BELOW
- E) BOUNDARY OF ACQUISITION LOTS 33 A 33 IN DP 1224219 BELOW
- F) BOUNDARY OF ACQUISITION LOTS 33 A 33 IN DP 1224219 BELOW
- G) BOUNDARY OF ACQUISITION LOTS 33 A 33 IN DP 1224219 BELOW
- H) BOUNDARY OF ACQUISITION LOTS 33 A 33 IN DP 1224219 BELOW
- I) BOUNDARY OF ACQUISITION LOTS 33 A 33 IN DP 1224219 BELOW
- J) BOUNDARY OF ACQUISITION LOTS 33 A 33 IN DP 1224219 BELOW

Schedule 7 – Terms of Easement in Gross

1 Terms of easement for public access variable width (MM)

1.1 Definitions

These meanings, in any form, apply unless the contrary intention appears

Authorised User means every person authorised by the Grantee for the purposes of an easement, positive covenant and restriction on use created by this instrument and includes members of the public as determined by the authority benefitted from time to time. Subject to the terms of an easement, positive covenant and restriction on use, an Authorised User includes, without limitation, the tenants, employees, agents, contractors and licensees of the Grantee

Development has the same meaning as defined in the VPA

Easement Commencement Date means the later of

- (a) the date on which the Grantor completes the VPA Works, and
- (b) the date on which access to the Easement Site by the Grantee is safe,

but in any event not later than the earlier of the Sunset Date and the final Occupation Certificate for the Development, or such later date as agreed by the Developer and Council in writing

Easement Site means in relation to an easement in this instrument

- (a) the site of an easement on the Plan, and
- (b) all items within the site of the easement identified on the Plan which are the subject of the easement,

as varied under clause 1.4

Final Easement Site means the area identified on a plan of survey prepared by the Grantor identifying the location of the final as constructed pedestrian / cycle pathway and any additional areas intended for access by the public under this instrument which form part of the VPA Works

Grantee means (as applicable)

- (a) the owner of an estate in fee simple or mortgagee in possession of a Lot Benefited, and
- (b) the community association under the Community Land Development Act 1989 (NSW) in respect of a Lot Benefited, and
- (c) an authority benefitted

Grantor means the registered proprietor of the Lot Burdened

Lot Benefited means a lot benefitted by an easement, positive covenant or restriction on use in this instrument

Lot Burdened means a lot burdened by an easement, positive covenant or restriction in this instrument

Plan means the plan of subdivision to which this instrument relates

Sunset Date has the same meaning as defined in the VPA

VPA means the Planning Agreement dated [] 2024 between Cook Cove Nominees No 1 Pty Limited, Cook Cove Nominees No 2 Pty Limited and Bayside Council

VPA Works means the Foreshore Works as defined in the VPA

Works means the works related to the proper construction, demolition, installation, cleaning, maintenance, repair, restoration and replacement of all surfaces, improvements, plant, building, equipment, lighting, landscaping and utilities

1 2 Grant of easement

The Grantor at the Grantor's expense grants the Grantee (including its Authorised Users) and members of the public the full, free and unimpeded right to pass and repass across the Easement Site, on foot, with bicycles or with wheelchairs or other disabled access aids and with animals (providing those animals are at all times accompanied by Authorised Users)

1 3 Commencement of Easement

Despite any other provision of this instrument, the rights and obligations of the Grantee and the Grantor under this easement do not commence until the Easement Commencement Date

The Grantor agrees to give notice to the Grantee of the date of the Easement Commencement Date promptly after the Easement Commencement Date occurring

1 4 Variation of the Easement Site

1 4 1 The Grantor and the Grantee agree that, once the VPA Works have been completed, the parties must do all things reasonably necessary (to the extent necessary) to ensure that this easement is varied so as to burden the land which comprises the Final Easement Site and no other land

1 4 2 The Grantor and Grantee agree to sign all documents and do all things necessary to give effect to clause 1 4 1 including but not limited to preparing a plan and dealing recording the variation of the easement over the relevant part of the Lot Burdened upon demand by the other in accordance with this clause The Grantor will pay each party's costs in connection with the documentation and action contemplated in this clause

1 4 3 Without limiting clause 1 4 1 or clause 1 4 2, if, once the VPA Works are constructed, the Grantor grants to the Grantee a new easement on the same terms as this easement (except for this clause 1 4), over that part of the land which comprises or includes the Final Easement Site, then upon registration of that new easement, this easement will cease and the Grantor may have this easement removed from the title to the Lot Burdened

1 5 Access must be 24 hour access

Subject to clauses 1 6 ("Rights of the Grantor to temporarily suspend access")

and 1 11 ("Suspension of rights and obligations"), the Grantor must

1 5 1 provide access under this easement 24 hours per day, 7 days a week, and

1 5 2 allow members of the public to enjoy access without any requirement to carry keys, security card-keys or other access authorities

However, if the Grantor has done all things reasonably necessary to provide access in the manner required by this clause 1 5 but is restricted in providing such access by the requirements of any law, then the obligations of the Grantor are reduced to the extent necessary to comply with the law

1 6 Rights of the Grantor to temporarily suspend access

The Grantor may, from time to time, temporarily suspend access to, and use of, parts of the Easement Site

1 6 1 in an emergency or for maintenance and repair purposes, and/or

1 6 2 where access to those parts of the Easement Site is required for Works being carried out on land within the development which is adjacent to the Easement Site, pursuant to the relevant development approvals,

provided

1 6 3 except in an emergency, the Grantor gives reasonable notice of its intention to suspend access to or use of parts of the Easement Site by notice posted on or near the relevant area, and

1 6 4 the Grantor only suspends access to and use of parts of the Easement Site for the period required to remedy an emergency or maintain, repair or carry out Works on the Easement Site (as applicable) and that the Grantor exercises all necessary and reasonable endeavours to provide the Grantee (and its Authorised Users) safe alternate means of access by way of access licence at no cost to the Grantee and its Authorised Users through the Lot Burdened during any period where the access and use of parts of the Easement Site are temporarily suspended by the Grantor in accordance with this instrument, and

1 6 5 the Grantor promptly removes any notices of suspension of access from the relevant part of the Easement Site at the end of the period of suspension of access

1 7 Conduct of access

The Grantor must ensure that all access and the temporary suspension of access under this easement is conducted in a proper and safe manner and in accordance with the requirements of Government Agencies and the law

1 8 Making rules

The Grantor may make reasonable rules about the use of the Easement Site by the Grantee and its Authorised Users

1 9 Minimising damage

The Grantor must

1 9 1 take all reasonable precautions to ensure as little damage as possible to the Lot Burdened,

1 9 2 clean, maintain and undertake any necessary capital repairs to the

Easement Site, and

1 9 3 promptly make good any damage caused by exercising rights or complying with obligations under this easement (without limiting the rights of the Grantor at law)

1 10 Requirements for use

The Grantor may submit a request to the Grantee that the Grantee and its Authorised Users must not

1 10 1 consume alcohol on the Easement Site, or

1 10 2 fish from the Easement Site, or

1 10 3 deposit or throw garbage on the Easement Site (other than in garbage receptacles provided by the Grantor for that purpose), or

1 10 4 swim, dive or snorkel for recreational purposes from the Easement Site,

however the Grantee has the sole discretion (acting reasonably) to accept or deny such a request made by the Grantor

1 11 Suspension of rights and obligations

Subject to clause 1 6 of this instrument, the rights and obligations of the Grantee and Grantor under this easement in respect of a part of the Easement Site on which Works are being, or proposed to be, carried out under the relevant development approvals as at the date of registration of this instrument are suspended from the date of registration of this instrument until the date of the issue of an Occupation Certificate in respect of the relevant part of the Easement Site on completion of the Works

The Grantor must

1 11 1 give notice of the suspension of access to or use of parts of the Easement Site under this clause 1 11 by notice posted on or near the relevant area, and

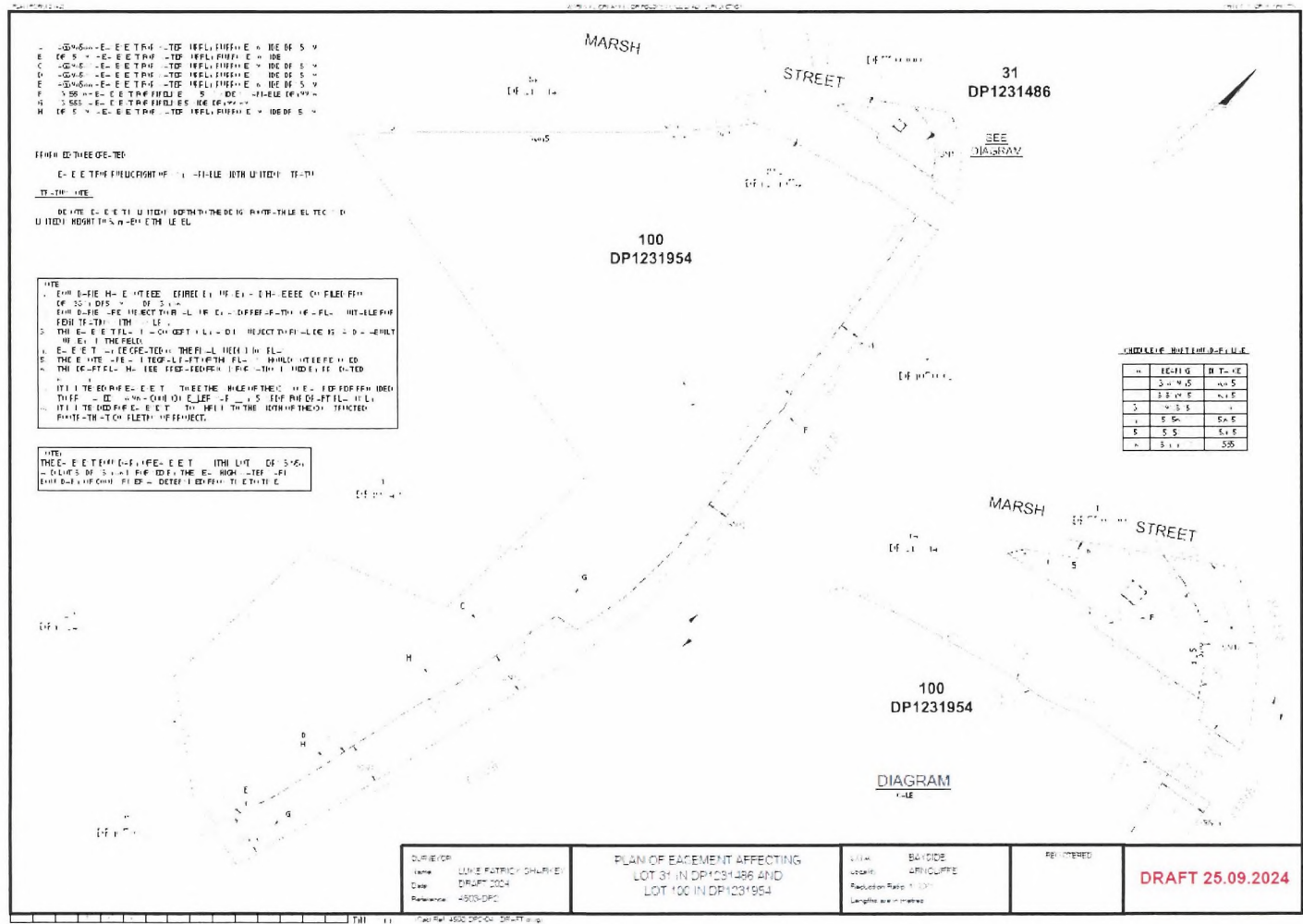
1 11 2 notify the Grantee in writing of the issue of the Occupation Certificate for the relevant part of the Easement Site within 10 Business Days of the issue of the Occupation Certificate, and

1 11 3 promptly remove any notices of suspension of access from the relevant part of the Easement Site at the end of the period of suspension of this easement determined in accordance with this clause 1 11

Name of Authority Empowered to Release Vary or Modify the easement numbered 1 in the Plan

Bayside Council

Schedule 8 – Plan of Easement



Schedule 9 – Access Terms

1 Definitions

In this **Schedule 9**, words beginning with a capital letter that are defined

- (1) in clause 1 1 of this Deed have the meaning ascribed to them in that clause, or
- (2) which are not defined in that clause, have the meaning ascribed to them as set out below
 - (a) **Licence** means the rights of the Licensee to access the Premises granted under this document,
 - (b) **Licensee** means the Developer, its officers, contractors, agents, invitees and licensees,
 - (c) **Premises** means that part of the Council Land being accessed,
 - (d) **Purpose** means the purpose of the Developer performing its obligations under this Deed

2 Licence

2.1 Grant of the Licence

The Council grants the Licence to the Licensee for the Purpose

2.2 Personal rights

- (1) The Licence is personal to the Licensee
- (2) The Licensee may not Encumber nor Assign the Licence without the prior written consent of the Council

2.3 Leasehold interest

- (1) This **Schedule 4** does not grant to the Licensee a leasehold interest in the Premises. The parties agree that
 - (a) subject to any contrary terms of this document, the Licence does not confer exclusive possession of the Premises on the Licensee, and
 - (b) the Licensee may not exclude the Council, its officers, employees and invitees from
 - (i) entry onto the Premises, and/or
 - (ii) the performance of any works on the Premises,provided that such entry onto and/or performance of work on the Premises does not unreasonably interfere with the conduct of the Purpose, and
- (2) the Licensee does not have any right to quiet enjoyment of the Premises, and
- (3) the Licensee will not at any time seek to enforce an interest in the Premises in competition with the interest held by the Licensee

3 Compliance With authorities

3.1 No warranty as to suitability for use

The Licensee acknowledges and agrees that the Council has not made any representation or warranty to the Licensee regarding the suitability of the Premises for the Purpose

3.2 Compliance with the terms of the Consents

In the conduct of the Purpose and compliance with its obligations under this **Schedule 9**, the Licensee must comply with the requirements of all Authorities

3.3 Compliance with directions from Authorities

The Licensee must comply with all notices, directions, orders or other requests served upon itself or the Council by an Authority if the notice, direction, order or request arises from the conduct of the Licensee carrying out the Purpose on the Premises

3.4 Obtaining further consents

- (1) If the Licensee requires further consents to conduct the Purpose it must
 - (a) make such applications itself, and
 - (b) bear all costs incurred by it in relation to obtaining the relevant consent
- (2) The Council agrees that it will, where required, sign all authorities reasonably required by the Licensee to make any application for consent to any Authority

4 Limitation of the Council's liability

4.1 Insurances

- (1) The Licensee must effect and keep current and in force the following policies of insurance
 - (a) a Broadform Public Liability Insurance policy with a reputable insurance company approved by the Council in an amount of \$20,000,000 for any one occurrence in respect of any liability for
 - (i) personal injury or death of any person, and
 - (ii) loss of or damage to property,
 - (b) workers compensation insurance under the *Workers Compensation Act 1987* (NSW) covering all persons employed or deemed to be employed by the Licensee in connection with the conduct of the Purpose,
 - (c) a comprehensive policy of motor vehicle insurance or an unlimited third party property insurance policy in respect of all motor vehicles used in the conduct of the Purpose, and
 - (d) a contractor's risk policy of insurance in respect of all plant and equipment (including unregistered motor vehicles) used in the conduct of the Purpose
- (2) The policies referred to in paragraphs (1)(a), and 1(d) must, if possible, note the interest of the Council as principal

4.2 Inspection of insurance

- (1) The Licensee must produce at the renewal of each policy a certificate of currency issued by the insurer establishing that the policy is valid
- (2) The Council may carry out random audits to verify insurances held by the Licensee. The Licensee will assist in any audit and provide evidence of the terms and currency of the insurance policies whenever requested by the Council

4.3 Cancellation of insurance

If any policy is cancelled either by the Licensee or the insurer, the Licensee must notify the Council as soon as reasonably practicable

4.4 Risk

The Licensee uses and occupies the Premises at its own risk

4.5 Indemnity

The Licensee indemnifies the Council against any Claim (of whatever nature) made in respect of the Licensee's use and occupation of the Premises

4.6 WH & S

For the purposes of this **Schedule 4** and in accordance with clause 293 of the *Work Health & Safety Regulation 2017* (NSW) (**WH&S Regulation**), the Council

- (1) appoints as the "principal contractor" for any part of the Purpose conducted on the Premises, the head civil works contractor specified by the Licensee from time to time, or if there is no such contractor nominated, the Licensee, and
- (2) will authorise the nominated head civil works contractor to exercise such authority of the Council as is necessary to enable the head civil works contractor to discharge the responsibilities imposed on a principal contractor under Chapter 6 of the WH&S Regulation

5 Breach of obligations

5.1 Notification of breach

If the Council reasonably considers that the Licensee is in breach of any obligation under this **Schedule 9**, it may give a written notice to the Licensee

- (1) specifying the nature and extent of the breach,
- (2) requiring the Licensee to
 - (a) rectify the breach , and
- (3) specifying the period within which the breach is to be rectified being a period that is reasonable in the circumstances

5.2 Failure to comply with breach notice

If the Licensee fails to comply with a notice given under clause 5 1, the Licensor may (in addition to any rights it has at Law) immediately suspend the rights of the Licensor under the Licence

Schedule 10 – Terms of Positive Covenant

PARTIES:

The registered proprietor of the Burdened Land from time to time (**Burdened Landowner**)

AND

Bayside Council ABN 80 690 785 443 (**Council**)

BURDENED LAND: [INSERT]

COUNCIL LAND: [INSERT]

1 Conduct

The Burdened Landowner, at its cost, must carry out all works required to maintain and keep in a good and satisfactory state of repair the Council Land and all improvements on the Council Land (including roads and footpaths) (**Maintenance Works**)

- (1) in accordance with the requirements of, or consents issued by, any relevant authority, and
- (2) in a proper and workmanlike manner complying with current industry practice and standards

2 Inspection by Council

Council may inspect the Maintenance Works at any reasonable time

3 Ongoing Maintenance Works Notice

Within ten (10) business days of inspecting the Maintenance Works, Council may provide notice in writing (**Maintenance Works Notice**) to the Burdened Landowner that the Maintenance Works have not been conducted in accordance with clause 1 and detail the work Council requires the Burdened Landowner to carry out in order to rectify the deficiencies in those Maintenance Works

4 Failure to rectify

- (1) If the Burdened Landowner fails to rectify the Maintenance Works in accordance with the Maintenance Works Notice, Council may
 - (a) issue a further Maintenance Works Notice in accordance with the provisions of clause 3, which will apply to the Maintenance Works, or
 - (b) at its absolute discretion, carry out the Maintenance Works in accordance with the Maintenance Works Notice, but only after giving the Burdened Landowner two (2) business days written notice of its intention to do so

- (2) Where Council exercises its step-in rights, the Burdened Landowner must pay to Council on demand any reasonable costs incurred by Council in carrying out the Maintenance Works

5 *Obligation maintain following subdivision of the Lot Burdened [This clause to be included only in the instrument registered over Lot 100 and does not apply to Lot 31]*

- (1) The parties acknowledge that the owner of the Lot Burdened may subdivide the Lot Burdened into a number of lots in connection with the development of the Lot Burdened and after such subdivision those lots may be owned by different persons
- (2) The obligation to carry out the Maintenance Works under this instrument in respect of the Burdened Land and improvements on the Burdened Land (including roads and footpaths) is, in respect of the relevant subdivided lot and the improvements on that subdivided lot (including roads and footpaths), binding only on the owner from time to time of that subdivided lot after registration of any subdivision

Name of Authority with the right to release, vary or modify this positive covenant: Bayside Council

Appendix Explanatory Note

Explanatory Note

Bayside Council (ABN 80 690 785 443)

and

**Cook Cove Nominees No 1 Pty Limited (ACN 672 807 037) in its capacity as the trustee
of the Cook Cove Property Trust 1**

and

**Cook Cove Nominees No 2 Pty Limited (ACN 672 807 046) in its capacity as the trustee
of the Cook Cove Property Trust 2**

Draft Planning Agreement

Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the draft planning agreement (the **Planning Agreement**) prepared under Subdivision 2 of Division 7.1 of Part 7 of the *Environmental Planning and Assessment Act 1979* (the **Act**).

This explanatory note has been prepared having regard to the Planning Agreements Practice Note and its contents have been agreed by the parties.

Words appearing with capital letters in this note have the meanings given to them in this note or, if not defined in this note, in the Planning Agreement.

This explanatory note must not be used to assist in construing the Planning Agreement.

Parties to the Planning Agreement

The parties to the Planning Agreement are:

- a) Bayside Council (ABN 80 690 785 443) (**Council**);
- b) Cook Cove Nominees No 1 Pty Ltd (ACN 672 807 037) in its capacity as the trustee of the Cook Cove Property Trust 1 (**Cook Cove 1**); and
- c) Cook Cove Nominees No 2 Pty Ltd (ACN 672 807 046) in its capacity as the trustee of the Cook Cove Property Trust 2 (**Cook Cove 2**)

(Cook Cove 1 and Cook Cove 2, together are the **Developer**).

Description of the Subject Land

The Planning Agreement applies to:

- a) Lot 31 in DP1231486, known as 19 Marsh Street, Arncliffe owned by Cook Cove 1;
and

- b) Lot 100 in DP1231954, known as 19A Marsh Street, Arncliffe owned by Cook Cove 2,

(together the **Developer Land**); and

- c) Lot 14 in DP213314, known as 19 Marsh Street, Arncliffe owned by Council; and

- d) Lot 1 in DP108492, known as 13 Marsh Street, Arncliffe owned by Council,

(together the **Council Land**)

(the Developer Land and the Council Land are together the **Land**).

A plan showing the Land (comprising the Developer Land and the Council Land) is at the end of this explanatory note.

Description of the Proposed Development

The Developer is seeking to carry out development for predominantly mixed-use and logistics purposes on the Land, to be completed in stages and generally in accordance with Planning Proposal PP-2022-1748 (**Planning Proposal**), which seeks to remove the Land from the operation of Chapter 6 of *State Environmental Planning Policy (Precincts – Eastern Harbour City) 2021* and insert new provisions into the *Bayside Local Environmental Plan 2021* (**Bayside LEP**) to:

- a) rezone the Subject Land to SP4 Enterprise, RE1 Public Recreation, C2 Environmental Conservation and SP2 Infrastructure;
- b) reclassify the Council Land from community land to operational land;
- c) introduce an overall maximum building height of RL 51m with transitions across the site;
- d) limit gross floor area within different areas of the site to an aggregate of 343,250m² and insert floor area requirements to achieve intended logistics and warehousing outcomes; and
- e) permit additional permitted uses within the SP4 Enterprise zone and site-specific planning provisions (**Proposed Development**).

The Developer has made an offer to Council to enter into the Planning Agreement in connection with the change to the Bayside LEP resulting from the Planning Proposal (**Instrument Change**) and the carrying out of the Proposed Development facilitated by the Instrument Change.

An indicative plan of the Proposed Development is at the end of this explanatory note.

Summary of Objectives, Nature and Effect of the Planning Agreement

The objective of the Planning Agreement is to facilitate the provision of local infrastructure within the meaning of Subdivision 3 of Division 7.1 of the Act.

The Planning Agreement requires the Developer to make development contributions in connection with the Proposed Development for the purposes of the provision of local infrastructure.

The development contributions comprise:

a) the carrying out of the following Works:

i) (Item No. 1) Gertrude Street extension and upgrade comprising:

- (1) construction of extension of Gertrude Street between Marsh Street and Levey Street;
- (2) construction of a new roundabout and kerb realignment at the intersection of Gertrude Street and Levey Street; and
- (3) widening of Gertrude Street north side between Princes Highway and Levey St,

as shown in the development contribution plan as '1A', '1B' and '1C' included at the end of this explanatory note (**Draft Contribution Plan**);

ii) (Item No. 2) Extension of Gertrude Street East comprising:

- (1) construction of the extension of Gertrude Street East as shown in the Draft Contribution Plan as '2';

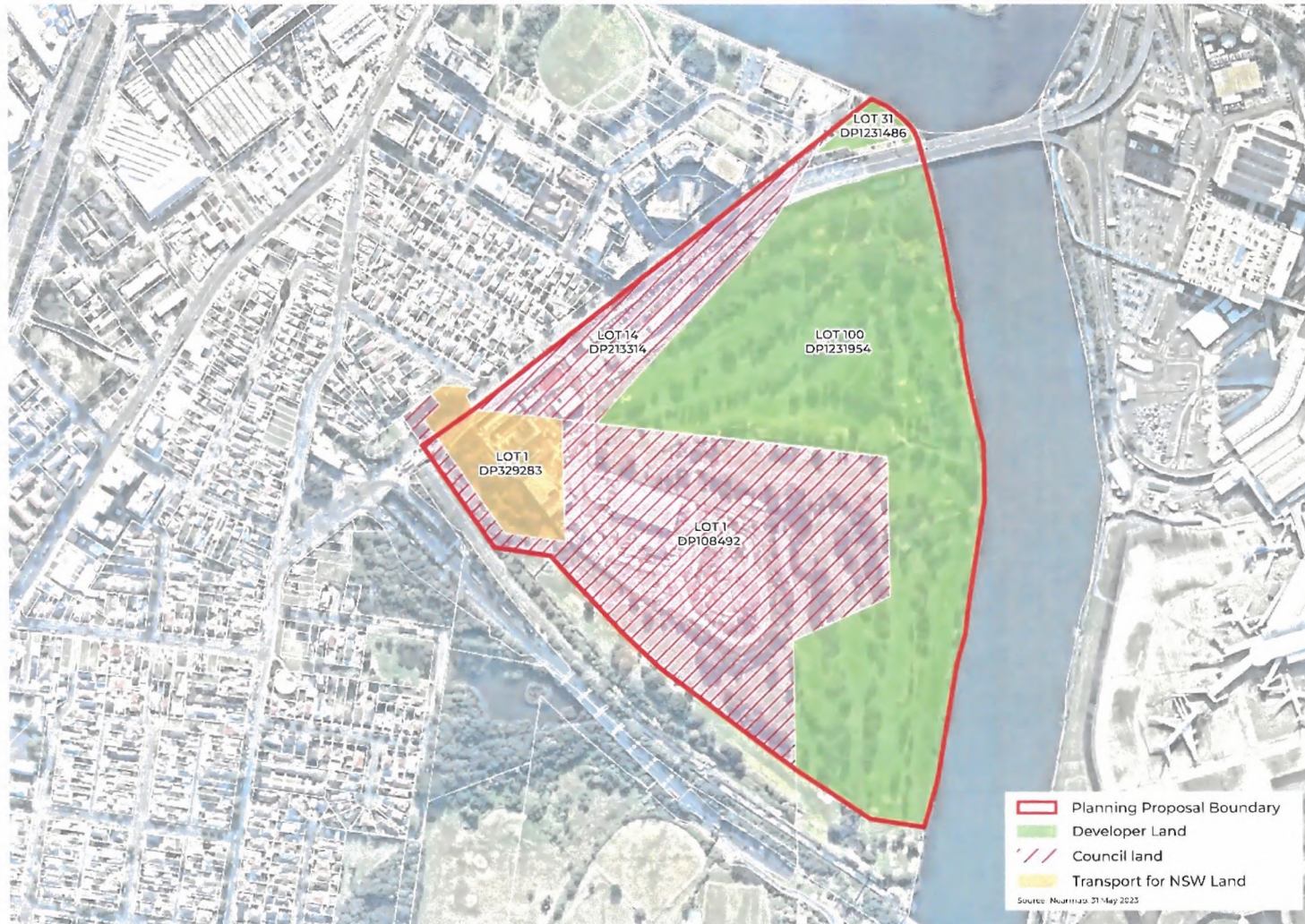
iii) (Item No. 3) Extension of Flora Street East comprising:

- (1) construction of the extension of Flora Street East as shown in the Draft Contribution Plan as '3';

iv) (Item No. 4) Cooks River Foreshore public open space comprising:

- (1) construction of a publicly accessible shared pathway and associated hard and soft landscaping;
- (2) capping and protection of the ethane gas pipeline; and
- (3) demolition and re-construction of the seawall (together the **Cooks River Foreshore Work**);

PLAN SHOWING THE LAND (COMPRISING THE DEVELOPER LAND AND THE COUNCIL LAND)



INDICATIVE PLAN OF THE PROPOSED DEVELOPMENT

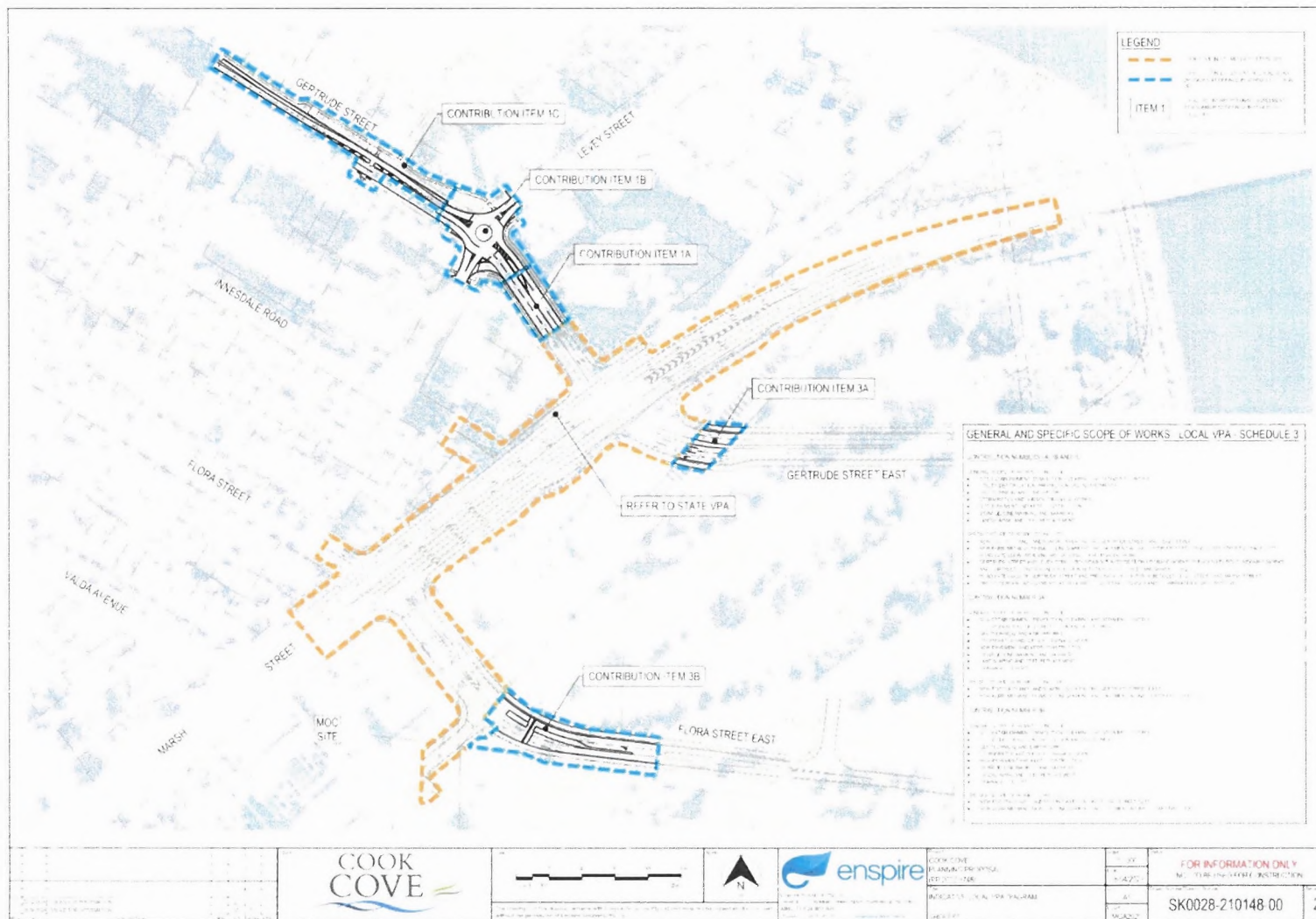
MASTERPLAN



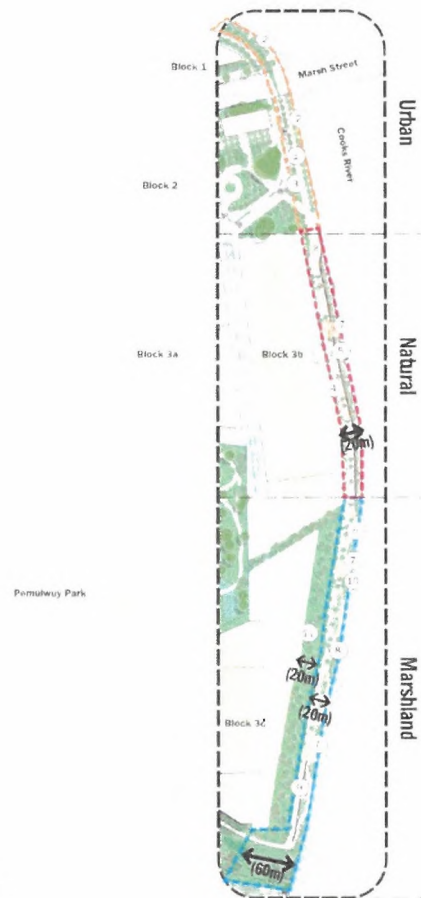
DRAFT SUBDIVISION PLAN

DRAFT CONTRIBUTION PLAN

INDICATIVE WORKS PLAN ITEM NO.S 1-3



INDICATIVE WORKS PLAN Item No. 4



The Cooks River foreshore is a 20m wide landscaped corridor approximately 1km in length. The foreshore will provide public waterfront access via pedestrian walkways and a separated two-way cyclepath. There will be areas of ecological restoration and salt marsh planting with boardwalks and lookouts.

The Cooks Rive Foreshore will be an exciting new waterfront destination for the surrounding community, visitors and workers within the adjacent development. Accessible to the public, the foreshore will connect with the existing Cahill Park to the north and the new Pemulwuy Park to the south. There will also be safeguarding for future pedestrian and cycle connections to the south over the existing SWSOOS, which will provide a regional link to the south, connecting with a future Muddy Creek crossing and existing pathways to Kyeemagh and Sans Souci.

The proposed foreshore aims to achieve the following outcomes:

- Maximise public and visual access
- Provide a dedicated two-way cyclepath, and safeguard for a future cycle link to the south over the SWSOOS (by others)
- Provide a diverse and natural pedestrian waterfront experience through promenades, walkways and boardwalks
- Provide ecological restoration and habitat creation with mangroves and salt marsh planting
- Preserve corridor views to the adjacent Pemulwuy Park, and open views to the Cooks River
- Maximise public safety with pedestrian lighting and visual surveillance from the adjacent development

LEGEND

- 1 Landscaped promenade
- 2 Lookout viewpoint
- 3 Landscaped buffer to road
- 4 Landscaped embankment
- 5 Mangroves between MWL and MWL
- 6 Dedicated pedestrian boardwalk
- 7 Lookout tower
- 8 Landscaped walkway with semi-regular planting
- 9 Cycle path
- 10 Private development zone with shelter and interpretation signage
- 11 Other regular commercial and development future use not publicly accessible

Legend

- Environmental boundaries
- Urban boundaries
- Planning precinct boundaries



Images:

- 1 Westpoint Riverfront by Mawell Photo: Hubert Tang
- 2 Marshland at Kyeemagh by Mawell Photo: Hubert Tang
- 3 Kyeemagh Lagoon by Mawell Photo: Hubert Tang
- 4 Pemulwuy Riverfront by Mawell Photo: Hubert Tang

Cooks River Foreshore Plan

H

REVISION

DATE

SCALE

CLIENT

PROJECT NAME

DRAWING NUMBER

1618703596.1